

REPORTS
OF THE
PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSOURI

Volume 8 MPSC 3d
December 1, 1998 Through January 31, 2000

Kevin Kelly
Reporter of Opinions

JEFFERSON CITY, MISSOURI
(2002)

PREFACE

This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning December 1, 1998 through January 31, 2000. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 1978, as amended.

The syllabi or headnotes appended to the Reports and Orders are not a part of the findings and conclusions of the Commission, but are prepared for the purpose of facilitating reference to the opinions. In preparing the various syllabi for a particular case an effort has been made to include therein every point taken by the Commission essential to the decision.

The *Digest of Reports* found at the end of this volume has been prepared to assist in the finding of cases. Each of the syllabi found at the beginning of the cases has been catalogued under specific topics which in turn have been classified under more general topics. Case citations, including page numbers, follow each syllabi contained in the Digest.

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ORGANIZATION OF THE PUBLIC SERVICE COMMISSION

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TA-99-420	Access One, Inc. (Certificate of service authority, IXC, granted)	5/24/99
TA-99-67	ACI Corp. (Certificate of service authority, basic local, local exchange and IXC, granted)	6/10/99
TO-2000-212	ACI Corp. (Name change to Rhythms Links Inc., acknowledged)	9/28/99
TD-99-455	Activetel L.D., Inc. (Certificate of service authority, IXC, canceled) ...	4/19/99
TA-2000-215	Adelphia Business Solutions Operations, Inc. (Certificate of service authority, basic local telecommunications services, granted) ...	11/18/99
TA-2000-315	Adelphia Business Solutions Operations, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	12/9/99
TO-99-291	Advanced Communications Group, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	2/10/99
TA-99-49	Advanced Communications Group, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	4/23/99
TO-2000-274	Advanced Communications Group, Inc. and its wholly owned subsidiary, Feist Long Distance Service, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	12/14/99
TD-99-410	Advantage Communications Group, Inc. (Certificate of service authority, IXC, canceled)	4/6/99
TA-99-328	Advantage Telecommunications, Corp. (Certificate of service authority, IXC, granted)	3/8/99
TO-99-214	Aerial Communications, Inc. (Interconnection agreement with Sprint Missouri, Inc., granted)	1/14/99
TA-99-355	Airnex Communications, Inc. (Certificate of service authority, IXC, granted)	4/6/99
TA-2000-1	Allegiance Telecom of Missouri, Inc. (Certificate of service authority, resold and facilities-based basic local exchange telecommunications services, granted)	10/7/99
TO-2000-202	Allegiance Telecom, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	10/29/99
TO-2000-329	Allnet Communications Services, Inc. d/b/a Frontier Communications Services (Name change to Global Crossing Telecommunications, Inc., recognized)	12/27/99
TA-99-298	ALLTEL Communications, Inc. (Certificate of service authority, basic local telecommunications service, granted)	9/2/99

TO-99-524	Alma Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-367	America One Communications, Inc. (Certificate of service authority, IXC, granted)	4/9/99
TD-99-456	American Teletronics Long Distance, Inc. (Certificate of service authority, IXC, canceled)	4/19/99
TD-99-438	Ameritech Communications International, Inc. (Certificate of service authority, IXC and local exchange service, canceled)	8/20/99
TD-99-583	Ameritech Communications International, Inc. (Certificate of service authority, basic local telecommunications service, canceled)	8/20/99
TD-99-457	Amerivox, Inc. (Certificate of service authority, IXC, canceled)	4/19/99
TD-99-453	Amtel Communications, Inc. (Certificate of service authority, IXC, canceled)	4/19/99
TA-99-538	Archway Communications, Inc. (Certificate of service authority, pay phone, granted)	5/28/99
TA-2000-223	AS Telecommunications, Inc. d/b/a ALLSTAR Telecom (Certificate of service authority, IXC, granted)	10/26/99
TA-99-324	Atlantic Telephone Company, Inc. (Certificate of service authority, IXC, granted)	3/8/99
TA-99-216	ATN Communications Incorporated (Certificate of service authority, IXC, granted)	12/29/98
TO-99-488	AT&T Communications of the Southwest, Inc. (IntraLATA presubscription implementation plan, approved)	6/10/99
TT-2000-52	AT&T Communications of the Southwest, Inc., (Tariffs to introduce All In One Service, approved)	8/26/99
TA-2000-179	Axces Acquisition, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications service, granted)	9/13/99
TM-99-601	Axces, Inc. (Transfer of assets to Axces Acquisition, Inc., a wholly owned subsidiary of Gemini II, Inc., approved)	10/7/99
TO-2000-156	Axon Telecom, L.L.C. (Certificate of service authority, IXC, granted)	9/24/99

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TA-99-357	Barker, Gina (Certificate of service authority, pay phone, granted)	3/18/99
TO-99-199	BarTel Communications, Inc. (Resale agreement with Southwestern Bell Telephone Company, approved)	1/21/99
TA-99-138	BarTel Communications, Inc. (Certificate of service authority, basic local telecommunications service, granted)	2/2/99
TO-99-590	BarTel Communications, Inc. (Interconnection agreement with GTE Midwest Incorporated and GTE Arkansas, Incorporated, granted)	7/27/99

TA-2000-107	Basicphone, Inc. (Certificate of service authority, basic local and local exchange telecommunications services, granted)	11/17/99
TD-2000-50	Bates, Robert L. (Certificate of service authority, pay phones, canceled)	9/3/99
SM-99-249	Batson Development Company, Inc. (Sale of sewer system to Pike Creek Sewer District, granted)	4/22/99
TD-99-454	Bel-Save, Inc. (Certificate of service authority, IXC, canceled)	4/19/99
TM-99-556	Big Planet, Inc. (Merger with Nu Skin Enterprises, Inc., approved)	11/4/99
TO-99-566	Birch Telecom of Missouri, Inc. (IntraLATA dialing parity plan, approved)	6/10/99
TO-2000-6	Birch Telecom of Missouri, Inc. (Interconnection agreement with Southwestern Bell, granted)	8/31/99
TA-99-449	Blackstone Communications Company (Certificate of service authority, IXC, granted)	5/18/99
TA-99-587	BlueStar Networks, Inc. (Certificate of service authority, IXC, non-basic local exchange telecommunications service and exchange access services, granted)	12/22/99
TA-99-184	Booth, Bart D. (Certificate of service authority, pay phones, granted)	12/10/98
TO-99-289	BroadSpan Communications, Inc. (Name change to Primary Network Communications, acknowledged)	1/25/99
TO-99-492	BroadSpan Communications, Inc. (IntraLATA presubscription implementation plan, approved)	6/10/99
TO-99-584	BroadSpan Communications, Inc. d/b/a Primary Network Communications (Interconnection agreement with GTE Midwest Incorporated, granted)	7/27/99
TA-2000-303	BroadStream Corporation (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	12/2/99
TD-99-233	Buchmann, Eric (Certificate of service authority, pay phone, canceled)	12/7/98
TO-99-286	Business Calling Plan, Incorporated (Recognizing name change to Corporate Calling Services, Incorporated, acknowledged)	1/5/99
TO-99-130	Business Telecom, Inc. (Order approving interconnection agreement with Southwestern Bell)	12/22/98
TA-99-548	Buy-Tel Communications, Inc. (Certificate of service authority, basic local telecommunications service, granted)	9/7/99

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TA-99-586	Cable & Wireless Global Markets, Inc. (Certificate of service authority, IXC, granted)	7/30/99
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TA-2000-21	CallManagement, Inc. (Certificate of service authority, IXC, granted)	8/20/99
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TA-99-152	Camarato Distributing, Inc. (Certificate of service authority, IXC and basic local exchange telecommunications services, granted)	5/20/99
TO-2000-227	Camarato Distributing, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	11/16/99
WM-99-238	Capital Utilities, Inc., Riverside Utility Company, Inc., Foxfire Utility Company, Inc. (Sale and transfer of stock to AquaSource, Inc., granted)	2/4/99
TD-99-390	Caponetto, Michael and Judith (Certificate of service authority, pay phone, canceled)	3/18/99
TO-99-201	CapRock Communications Corp. (Adoption notice reflecting that CapRock will be operating under the new corporation name of CapRock Telecommunications Corp., approved)	12/7/98
TA-2000-252	CapRock Telecommunications Corp. (Certificate of service authority, basic local exchange telecommunications services, granted)	11/22/99
TA-99-472	Cartwright, Randy d/b/a Cartwright Communications (Certificate of service authority, pay phone, granted)	5/24/99
TO-99-499	Cass County Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TO-99-476	CCCMO, Inc. d/b/a Connect ! (Interconnection agreement with Southwestern Bell Telephone Company, granted)	7/14/99
TA-2000-199	CCCMO, Inc. d/b/a Connect ! (Certificate of service authority, basic local and local exchange telecommunications service, granted)	12/29/99
TA-99-473	C.C.O. Telecom, Inc. (Certificate of service authority, basic local telecommunications services, granted)	7/9/99
TA-99-609	C.C.O. Telecom, Inc. (Certificate of service authority, IXC, granted)	11/24/99
TA-99-609	C.C.O. Telecom, Inc. (Certificate of service authority, IXC, withdrawn)	1/6/00
TA-99-181	CDM Property Management LLC (Certificate of service authority, STS, granted)	4/6/99
TA-99-181	CDM Property Management LLC (Certificate of service authority, shared tenant services, granted)	8/6/99
TA-99-317	Central Missouri Telecommunications, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	4/8/99
TO-99-372	Central Missouri Telecommunications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	5/6/99

SA-98-530	Central Rivers Wastewater Utility, Inc. (Certificate of public convenience and necessity, operate and maintain sewer system in unincorporated area of Ray County, granted)	5/13/99
SA-2000-105	Central Rivers Wastewater Utility, Inc. (Certificate of public convenience and necessity, own and operate a sewer system in the Fox Run Subdivision near Kearney in Clay County, granted)	12/9/99
SA-2000-248	Central Rivers Wastewater Utility, Inc. (Certificate of public convenience and necessity, construct, own and operate sewer system in unincorporated area of Clay County, granted)	12/21/99
TO-99-208	Century Telecommunications, Inc. (Name change to CenturyTel Telecommunications, Inc., recognized)	12/15/98
TO-99-208	Century Telecommunications, Inc. (Name change to CenturyTel Telecommunications, Inc., granted)	2/10/99
TA-99-351	CenturyTel Long distance, Inc. (Certificate of service authority, IXC, granted)	3/30/99
TO-99-460 & TM-2000-157	CEO Telecommunications, Inc. and L. D. Services, Inc. (Merger of two companies with L.D. Services, Inc. the surviving entity using the name CEO Telecommunications, Inc., granted)	1/18/00
TA-2000-66	CfL, LLC d/b/a CfL Payphones (Certificate of service authority, pay phones, granted)	9/1/99
TO-2000-265	Charities Network International, Inc. (Name change to Net One International, Inc., acknowledged)	10/27/99
TA-99-562	Chariton Valley L.D. Corp. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	7/15/99
TO-99-525	Chariton Valley Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-98-561	Choctaw Communications, L.C. (Certificate of service authority, basic local exchange telecommunications services, granted)	12/22/98
TO-99-167	Choctaw Communications, L.C. (Resale agreement with Southwestern Bell Telephone Company, approved)	1/6/99
TM-99-79	Choctaw Telephone Company (Purchase of capital stock of Choctaw by Townes Telecommunications, Inc., granted)	4/20/99
TO-99-526	Choctaw Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-140	Christ, Tari d/b/a ANJ Communications (Certificate of service authority, pay phones, granted)	12/14/98
TA-2000-216	Ciera Network Systems, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	10/19/99

TA-2000-228	Ciera Network Systems, Inc. (Certificate of service authority, basic local and local exchange telecommunications services, granted)	11/19/99
TO-2000-236	Ciera Network Systems, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	11/30/99
TA-99-384	Cinemark USA, Inc. (Certificate of service authority, pay phone, granted)	4/6/99
EF-99-192	Citizens Electric Corporation (Order approving financing)	4/20/99
TA-2000-178	Citizens Long Distance Company (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	9/23/99
TO-99-500	Citizens Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TM-99-321	Coastal Telecom Limited Company (Merger into Eclipse Telecommunications, Inc., granted)	3/23/99
WO-99-129	Columbia, City of and Consolidated Public Water Supply District No. 1 of Boone County (Water territorial agreement, Boone County, approved)	1/26/99
TO-2000-300	Common Concerns, Inc. (Name change to Cash Back Rebates LD.com, Inc., recognized)	11/18/99
TM-2000-48	Comm South Companies, Inc. (Purchase of all of the outstanding common stock of Comm South by Topp Telecom, Inc., granted)	10/15/99
TA-99-537	Communicate Technological Systems, LLC (Certificate of service authority, IXC, granted)	6/4/99
TA-99-378	Community Payphones, Inc. (Certificate of service authority, pay phone, granted)	4/1/99
TO-2000-331	Compass Telecommunications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	1/14/00
TO-2000-209	Computer Business Sciences, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	10/19/99
TA-99-415	Concert Communications Sales, L.L.C. (Certificate of service authority, IXC, granted)	7/23/99
TA-99-532	Concert Communications Sales LLC (Certificate of service authority, basic local exchange telecommunications services, granted)	12/30/99
TA-2000-198	Connect ! LD, Inc. (Certificate of service authority, IXC, granted)	11/1/99
TA-2000-245	Convergent Communications Services, Inc. (Certificate of service authority, basic local telecommunications services, granted)	12/9/99
TO-99-501	Craw-Kan Telephone Cooperative, Inc. (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-575	Craw-Kan Communications Systems, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications service, granted)	7/6/99

TD-99-427	Crystal Communications, Inc. d/b/a Crystal Long Distance, Inc. (Certificate of service authority, IXC, canceled)	4/20/99
TA-99-594	Custom Teleconnect, Inc. (Certificate of service authority, pay phone, granted)	7/23/99
TA-99-595	Custom Teleconnect, Inc. (Certificate of service authority, IXC, interexchange operator assisted telecommunications services, granted)	7/28/99

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TA-99-150	Dakota Services Limited (Certificate of service authority, IXC and non-switched local exchange services, granted)	12/21/98
TO-99-564	Dakota Services Limited (Interconnection agreement with Southwestern Bell Telephone Company, approved)	8/5/99
TM-99-205	Davel Communications Group, Inc. and Peoples Telephone Company, Inc. (Merger of Peoples into Davel Communications Group, Inc., granted)	12/22/98
TA-99-145	DaveTel, Inc. (Certificate of service authority, IXC, granted)	12/22/98
TO-2000-273	Delta Phones, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	11/30/99
TA-2000-272	Delta Phones, Inc. (Certificate of service authority, basic local telecom- munications service, granted)	1/25/00
TA-99-159	DIECA Communications, Inc. (Certificate of service authority, basic local exchange, local exchange, exchange access services and interexchange telecommunications services, granted)	1/13/99
TA-99-337	DMJ Communications, Inc. (Certificate of service authority, basic local exchange telecommunications services on a resold basis, granted)	5/20/99
TA-2000-44	dPi-Teleconnect, L.L.C. (Certificate of service authority, basic local, local exchange and exchange access telecommunications services, granted)	11/19/99
TA-99-395	DSL Communications, L.L.C. (Certificate of service authority, local exchange and interexchange digital communication services, approved)	6/7/99
TO-2000-54	DSLnet Communications, LLC (Interconnection agreement with Southwestern Bell, approved)	9/29/99

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TA-99-573	Eagle Communications Group, Inc. (Certificate of service authority, IXC and pay phone, granted)	8/30/99
TM-99-605	Eclipse Telecommunications, Inc. (Merger of Telecom One into Eclipse, granted)	8/24/99

TO-2000-339	Eclipse Telecommunications, Inc. (Name change to BroadWing Telecommunications, Inc., recognized)	12/17/99
TM-99-605	Eclipse Telecommunications, Inc. and Telecom One, Inc. (Merger of Telecom One with Eclipse, order canceling certificate and closing case)	1/11/00
TO-2000-299	Econophone Services, Inc. (Name change to Destia Communications, Inc., recognized)	11/10/99
TO-99-502	Ellington Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-200	Ellington Telephone Company d/b/a McCormack-Missouri (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	10/1/99
TA-99-407	Elson, Greg (Certificate of service authority, pay phone, granted)	4/19/99
TA-99-253	Enhanced Communications Network, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	1/20/99
TA-99-604	Engineered Systems, Inc. (Certificate of service authority, pay phone, granted)	8/2/99
TA-99-422	erbia Network, Inc. (Certificate of service authority, IXC, granted)	5/18/99
TO-99-301	Ernest Communications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	3/23/99
TO-99-491	e. spire Communications, Inc. (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-560	ETS Payphones, Inc. (Certificate of service authority, pay phone, granted)	6/10/99
TO-99-213	EZ Talk Communications, L.L.C. (Interconnection agreement with Sprint Missouri, Inc., granted)	2/2/99

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TO-99-503	Farber Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-95	FDF Communications Co., d/b/a BPS Long Distance (Certificate of service authority, IXC and nonswitched local exchange telecommunications service, granted)	9/20/99
TA-2000-191	Fidelity Communication Services I, Inc. (Certificate of service authority, basic local telecommunications services, granted)	12/2/99
TA-2000-229	Fidelity Communication Services II, Inc. (Certificate of service authority, basic local and local exchange telecommunications services, granted)	11/30/99
GR-99-160	Fidelity Gas Company (1997-1998 Actual Cost Adjustment, order closing case)	8/20/99

TA-99-468	Fidelity Long Distance, Inc. (Certificate of service authority, IXC, granted)	6/25/99
TO-99-496	Fidelity Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-190	FirstWorld Communications, Inc. (Certificate of service authority, IXC, granted)	12/10/98
TA-99-356	Fiscus, Larry (Certificate of service authority, pay phone, granted)	3/18/99
TA-99-404	Focal Communications Corporation of Missouri (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	5/19/99
TA-99-403	Focal Communications Corporation of Missouri (Certificate of service authority, switched and dedicated, resold and facilities-based basic local telecommunications service, granted)	10/21/99
TA-99-462	FON Digital Network, Inc. (Certificate of service authority, IXC, granted)	5/21/99
WO-99-469	Four Seasons Water and Sewer Company (Name change to Lake Region Water & Sewer Company, acknowledged)	5/6/99
WM-99-238	Foxfire Utility Company, Inc., Capital Utilities, Inc., Riverside Utility Company, Inc. (Sale and transfer of stock to AquaSource, Inc., granted)	2/4/99
TA-99-368	Franciscan Sisters of Mary (Certificate of service authority, pay phone, granted)	4/19/99
TO-99-244	FreedomStarr Communications, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	1/20/99
TM-99-225	Frontier Corporation, Allnet Communication Services and Frontier Communications International, Inc. (Transfer of assets and reorganization, approved)	12/30/98
TO-99-493	Frontier Local Services, Inc. (IntraLATA presubscription implementation plan, approved)	6/10/99
TO-2000-328	Frontier Local Services, Inc. (Name change to Global Crossing Local Services, Inc., recognized)	12/27/99
TO-2000-326	Frontier Telemanagement, Inc. (Change corporate name to Global Crossing Telemanagement, Inc., recognized)	12/22/99
EO-99-144	Fulton, City of, Callaway Electric Cooperative (Change of electric supplier of nine consumers located within the City, granted)	3/16/99
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TA-99-173	Gabriel Communications of Missouri, Inc. (Certificate of service authority, basic local telecommunications services, granted)	3/4/99
TO-99-400	Gabriel Communications of Missouri, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	5/4/99

TA-99-363	Gates Communications, Inc. (Certificate of service authority, IXC, granted)	4/6/99
TM-99-598	Gateway Technologies, Inc. (Control stock transaction between Gateway and T-NETIX, Inc., granted)	8/24/99
TD-99-383	Gauvain, Steve d/b/a Cardinal Communications (Certificate of service authority, pay phone, canceled)	3/9/99
TD-99-425	GlobalOne, Inc. d/b/a Metrolink Communications, Inc. (Certificate of service authority, IXC, canceled)	4/20/99
TA-2000-11	Global Time, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	12/1/99
TA-99-419	Glyphics Communications, Inc. (Certificate of service authority, IXC, granted)	5/11/99
TO-99-505	Granby Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-35	Grand River Communications, Inc. d/b/a Lathrop Long Distance (Certificate of service authority, IXC and non-switched local exchange telecommunications service, granted)	9/9/99
TA-2000-35	Grand River Communications, Inc. d/b/a Grand River Long Distance (Certificate of service authority, IXC and non-switched local exchange telecommunications service, granted)	9/9/99
TO-99-506	Grand River Mutual Telephone Corporation (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-347	GTC Telecom, Inc. (Certificate of service authority, IXC, granted)	3/18/99
TO-99-271	GTE Communications Corporation (Interconnection agreement with Southwestern Bell Telephone Company, approved)	3/9/99
TA-98-152	GTE Communications Corporation (Certificate of service authority, basic local exchange telecommunications services, granted)	4/6/99
TO-99-307	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection with Preferred Carrier Services, Inc., granted)	4/15/99
TO-99-374	GTE Midwest, Inc. and GTE Arkansas, Inc. (Interconnection agreement with dPi-Teleconnect, L.L.C., granted)	5/11/99
TO-2000-47	GTE Midwest, Inc. and GTE Arkansas, Inc. (Interconnection agreement with Topp Comm, Inc., granted)	8/24/99
TO-99-610	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection agreement with Missouri State Discount Telephone, granted)	9/21/99
TO-2000-190	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection agreement with Now Communications, Inc., granted)	9/30/99
TO-2000-189	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection agreement with C.C.O. Telecom, Inc., granted)	10/27/99

TO-2000-203	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection agreement with St. Louis Paging Network, Inc. d/b/a Dial-A-Page, granted)	11/4/99
TO-2000-332	GTE Midwest Incorporated and GTE Arkansas Incorporated (Interconnection agreement with Sprint Spectrum L.P., approved)	1/25/00
TA-99-387	GTE Midwest Incorporated (Certificate of service authority, pay phone, granted)	4/19/99
TM-95-134 & TO-93-309	GTE Midwest Incorporated (Transfer of two southwest Missouri exchanges to Ozark Telephone Company, granted)	4/29/99
TD-99-542	GTE Telecommunications Services Incorporated (Certificate of service authority, IXC, canceled)	6/22/99

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EO-99-401	Hannibal, City of and Missouri Rural Electric Cooperative (Change of electric service provider, granted)	6/17/99
TA-99-310	Harcourt Telco, L.L.C. (Certificate of service authority, non-basic, non-switched local competitive telecommunications and interexchange digital)	3/2/99
TO-2000-148	Harcourt Telco, L.L.C. d/b/a Maverix.com, Inc. (Interconnection agreement with Southwestern Bell, approved)	9/27/99
TO-2000-57	Harcourt Telco, L.L.C. (Name change to Maverix.com, Inc., acknowledged)	10/20/99
TA-99-397	Havens, John d/b/a Southern Missouri Telecom (Certificate of service authority, pay phones, granted)	4/13/99
TD-99-434	Heartline Communications, Inc. (Certificate of service authority, IXC, canceled)	4/20/99
TD-99-283	Hensley, Ben (Certificate of service authority, pay phone, canceled)	1/5/99
SR-99-362	Hickory Hills Water & Sewer Company, Inc. (Sewer rate increase granted)	4/6/99
WR-99-361	Hickory Hills Water & Sewer Company, Inc. (Water rate increase granted)	4/6/99
TD-99-424	Hi-Rim Communications, Inc. (Certificate of service authority, IXC, canceled)	4/20/99
TA-2000-217	HJN Telecom, Inc. (Certificate of service authority, basic local telecommunications service, granted)	12/14/99
WA-97-510	Hoesch, George d/b/a Gascony Water Company (Certificate of public convenience and necessity to provide water service in Gasconade County near Hermann, Missouri, granted)	2/25/99
TO-99-508	Holway Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99

TA-2000-354	Hotel Connect Management, Inc. (Certificate of service authority, IXC, granted)	1/12/00
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TO-99-509	IAMO Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-371	Ideal Communication, Inc. (Certificate of service authority, pay phones, granted)	1/13/00
TA-99-579	INET Interactive Network System, Inc. (Certificate of service authority, IXC, granted)	8/2/99
TA-99-606	INTELCOM, INC. (Certificate of service authority, IXC, granted)	8/16/99
TO-2000-177	Intercontinental Communications Group, Inc. d/b/a ICLD (Name change to Intercontinental Communications Group, Inc. d/b/a Fusion Telecom, acknowledged)	9/24/99
TA-2000-259	Intercontinental Communications Group, Inc., d/b/a Fusion-Trucker Phone (Certificate of service authority, IXC, granted)	12/14/99
TA-99-175	Intercounty Tele-Tech, L.L.C. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	1/26/99
TD-98-326	Interlink Telecommunications, Inc. (Certificate of service authority, IXC, cancel)	12/29/98
TO-2000-364	Intermedia Communications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	1/25/00
TM-99-217	International Communications Group, Inc. (ICLD) (Transfer of control stock transaction between Fusion Telecommunications International, Inc., Fusion ICG Acquisition Corp. and ICLD, granted)	3/18/99
TA-2000-196	International Exchange Communications, Inc. (Certificate of service authority, IXC, granted)	12/21/99
TA-2000-390	IP Communications Corporation d/b/a IP Communications of the Southwest Corporation (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	1/25/00
TO-2000-345	IXC Communications Services, Inc. (Name change to BroadWing Communications Services, Inc., recognized)	12/23/99

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TA-99-148	JATO Communications Corp. (Certificate of service authority, basic local and local exchange telecommunications services, granted)	3/25/99
TO-99-555	JATO Communications Corp. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	7/27/99
TA-2000-141	JATO Operating Corp. (Certificate of service authority, IXC and basic local telecommunications services, granted)	10/29/99

TA-99-411	Jefferson Plaza Investors, Inc. d/b/a Blue Springs Office Suites (Certificate of service authority, STS, granted)	6/29/99
TA-99-452	Jefferson Plaza Investors, Inc. d/b/a Blue Springs Office Suites (Certificate of service authority, IXC, granted)	6/30/99
TA-99-342	Johnson, Anthony (Certificate of service authority, pay phone, granted)	3/18/99

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TO-2000-213	Kansas City Cable Partners d/b/a American Cablevision (Name change to Kansas City Cable Partners d/b/a Time Warner Cable, acknowl- edged)	10/26/99
EF-2000-8	Kansas City Power & Light (Order approving financing)	7/29/99
TA-99-565	Kataman Communications, L.L.C. (Certificate of service authority, IXC, granted)	6/23/99
TA-2000-255	KDD America, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	11/2/99
TO-99-510	Kingdom Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-144	Kingdom Telephone Company d/b/a Kingdom Long Distance (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	9/23/99
TO-99-511	KLM Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-576	KMC Telecom III, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	7/13/99
TA-99-577	KMC Telecom III, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	8/30/99
TO-2000-307	KMC Telecom III, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	12/10/99
TA-99-320	Koenig, Brian E. (Certificate of service authority, pay phone, granted)	3/3/99

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GF-99-239	Laclede Gas Company (Order approving financing)	1/12/99
TA-2000-45	Langworthy, Mark A. d/b/a Midwest Telephone (Certificate of service authority, pay phone, granted)	8/24/99
TO-99-512	Lathrop Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-182	LEC Long Distance, Inc. d/b/a CassTel Long Distance (Certificate of service authority, IXC, granted)	12/17/98

TA-99-330	LEC Long Distance, Inc. d/b/a CassTel Long Distance (Certificate of service authority, non-switched local exchange telecommunications services, granted)	3/16/99
TA-2000-342	Legacy Long Distance International, Inc. (Certificate of service authority, competitive intrastate interexchange and alternative operator services between and among locations within Missouri, granted)	1/5/00
TA-99-354	Legends Communications, Inc. (Certificate of service authority, IXC, granted)	4/21/99
TO-99-399	Lepper, Jim d/b/a TelStar (Name change to "Blue Line Payphone", acknowledged)	4/19/99
TO-99-513	Le-Ru Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-170	Level 3 Communications, LLC (Certificate of service authority, IXC, granted)	12/17/98
TA-99-171	Level 3 Communications, LLC (Certificate of service authority, basic local and local exchange telecommunications services, granted)	2/2/99
TO-99-446	Level Three Communications, LLC (Interconnection agreement with Southwestern Bell Telephone Company, approved)	6/23/99
TO-99-101	LOGIX Communications Corporation (Interconnection agreement with Southwestern Bell Telephone Company, approved)	12/1/98
TO-2000-352	London Telecom Network Corp. (Name change to TransWorld Network, Corp., recognized)	12/27/99
TA-99-465	Long Distance America, Inc. (Certificate of service authority, IXC, granted)	5/21/99
TA-2000-235	Loy, Michael F. d/b/a Bexar Communications (Certificate of service authority, pay phone, granted)	10/14/99
TD-99-423	Lyrihn Communications d/b/a Blue Earth Communications and Community Spirit (Certificate of service authority, IXC, canceled)	4/20/99

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TM-2000-343 &	Madison Dearborn Capital Partners III, L.P., and Dakota Services	
TO-2000-344	Limited (Transfer of control (merger) of Dakota with @link Merger Sub, Inc., approved)	12/30/99
TA-99-285	Magaster, Robert (Certificate of service authority, pay phone, granted)	1/26/99
TO-99-514	Mark Twain Rural Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TO-99-276	MAXCOM, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	2/9/99

TA-99-380	Maxxis Communications, Inc. (Certificate of service authority, IXC, granted)	4/13/99
TM-99-540	Maxxis Communications, Inc. (Transfer of assets, Maxxis' acquisition of certain assets of Colorado River Communications Corporation, granted)	8/3/99
TA-2000-135	McDonald County Long distance Company (Certificate of service authority, IXC, granted)	9/21/99
TO-99-515	McDonald County Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TM-99-588	MCI WorldCom, Inc. (Series of mergers and related transactions, granted)	7/6/99
TO-2000-26	McLeodUSA Telecommunications Services, Inc. (Interconnection agreement with Southwestern Bell, granted)	9/8/99
TA-2000-340	MetLojix Telecom, Inc. (Certificate of service authority, IXC, granted)	1/5/00
TD-99-95	MFS INTELENET OF MISSOURI, INC. (Certificate of service authority, IXC, canceled)	12/14/98
TD-2000-306	Microwave Services, Inc. (Certificate of service authority, IXC, canceled)	11/10/99
TO-99-527	Mid-Missouri Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-290	Mid-Missouri Telephone Company (Certificate of service authority, provide and resell interexchange private line and nonswitched local telecommunications services, granted)	12/2/99
TO-99-459	Midwestern Services L.C. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	5/26/99
TO-99-516	Miller Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
WA-2000-59	Missouri-American Water Company (Certificate of public convenience and necessity to provide water service in St. Charles County, Cole Creek area, granted)	10/14/99
WA-2000-58	Missouri-American Water Company (Certificate of public convenience and necessity to provide water service to an area adjacent to current service territory in Johnson County, granted)	11/16/99
GM-99-281	Missouri Gas Energy (Sale of steel service line, regulator and meter to serve one customer in Audrain County to AmerenUE, approved)	2/25/99
GM-99-334	Missouri Gas Energy, UtiliCorp United, Inc. (Sale of certain assets that serve 11 farm tap customers from Missouri Gas Energy to UtiliCorp United, Inc., granted)	5/11/99
TA-99-541	Missouri Public Pay Phone Corp. (Certificate of service authority, pay phone, granted)	6/16/99

TA-99-549	Missouri Telecom, Inc. (Certificate of service authority, basic local telecommunications service, granted)	9/21/99
TO-99-529	Modern Telecommunications Company (IntraLATA dialing parity plan, approved)	6/10/99
TO-99-528	MoKan Dial Inc. (IntraLATA dialing parity plan, approved)	6/10/99
WM-2000-4	Moore Bend Water Company (Sale of assets to Moore Bend Water Company, Incorporated, granted)	8/31/99
TA-2000-140	Moretina, Jeanne d/b/a J & J Telecom (Certificate of service authority, pay phones, granted)	9/15/99
TD-2000-41	Multimedia Long Distance Company (Certificate of service authority, IXC, canceled)	8/24/99
TA-2000-218	MVX.COM Communications, Inc. (Certificate of service authority, basic local and local exchange telecommunications services, granted)	12/13/99
TA-2000-65	Myers, Daniel R. (Certificate of service authority, pay phones, granted)	9/2/99

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TO-99-185	Navigator Telecommunications, LLC (Resale agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated, granted)	1/14/99
TO-99-311	Navigator Telecommunications, LLC (Interconnection agreement with Sprint Missouri, Inc., approved)	4/6/99
TA-2000-232	Navigator Telecommunications, L.L.C. (Certificate of service authority, IXC, granted)	10/29/99
TO-2000-291	Navigator Telecommunications, LLC (Interconnection agreement with Southwestern Bell Telephone Company, approved)	11/22/99
TA-2000-243	Navigator Telecommunications, LCC (Certificate of service authority, amending basic local telecommunications services certificate, granted)	12/8/99
TO-99-282	NET-tel Corporation (Resale agreement with Southwestern Bell Telephone Company, granted)	3/16/99
TA-99-180	NET-tel Corporation d/b/a NET-tel Communications Corporation (Certificate of service authority, basic local telecommunications services, granted)	3/18/99
TA-99-223	Network Billing Systems, L.L.C. (Certificate of service authority, IXC, granted)	1/26/99
TA-99-592	Network Communications International Corp. (Certificate of service authority, IXC, granted)	7/20/99
TA-2000-380	NetworkIP, LLC, (Certificate of service authority, IXC, granted index only)	1/25/00

TA-2000-311	New Edge Network, Inc. d/b/a New Edge Networks (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	12/17/99
TO-99-517	New Florence Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TO-99-523	New London Telephone Company, Stoutland Telephone Company, & Orchard Farm Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-253	NEXTLINK Long Distance Services, Inc. (Certificate of service authority, IXC, granted)	12/8/99
TA-99-48	NEXTLINK MISSOURI, INC. (Certificate of service authority, basic local exchange and local exchange intrastate telecommunications services, granted)	1/12/99
TA-99-220	Nextlink Missouri, Inc. (Certificate of service authority, IXC, granted)	1/25/99
TO-99-270	Nextlink Missouri, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	2/10/99
TO-2000-143	NEXTLINK MISSOURI, INC. (Interconnection agreement with Southwestern Bell, granted)	9/30/99
TO-99-149	Nextel West Corp. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	1/6/99
TO-99-235	Nextel West Corp., Inc. (Interconnection agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated, granted)	2/10/99
TO-99-530	Northeast Missouri Rural Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TO-99-168	Northpoint Communications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	1/6/99
TM-2000-280	NorthPoint Communications, Inc. (Corporate reorganization to establish NorthPoint as a wholly owned subsidiary of NorthPoint Holdings, Inc., approved)	12/7/99
WM-2000-314	North Suburban Public Utility Company, Inc. (Acquisition of all of the outstanding capital stock of The Meadows Water Company and more than 10 percent of the outstanding capital stock of the Ozark Shores Water Company, granted)	12/16/99
TA-2000-296	Northwestern Communications, Inc. (Certificate of service authority, pay phones, granted)	12/17/99
TO-2000-411	NYNEX Long Distance Company d/b/a Bell Atlantic Long Distance (Name change to NYNEX Long Distance Company d/b/a Bell Atlantic Business Services, granted)	1/26/00

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TD-2000-317	One Stop Telecommunications, Inc. (Certificate of service authority, IXC, canceled)	11/23/99
TA-2000-30	Opex Communications, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	8/30/99
TO-99-523	Orchard Farm Telephone Company, Stoutland Telephone Company, & New London Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-134	Oregon Farmers Mutual Long Distance, Inc (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	9/23/99
TO-99-518	Oregon Farmers Mutual Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-91	Osborne, Hugh (Certificate of service authority, pay phones, granted) .	9/1/99
WM-99-165	Ozark Mountain Water Company (Sale of assets to Riverside Utility Water Company, granted)	2/9/99
WA-99-99	Ozark Shores Water Company (Certificate of public convenience and necessity to provide water and sewer service to Summerhaven Condominiums in Miller County and water service to Perdue Development in Camden County, granted)	5/13/99
TA-2000-239	Ozark Telecom, Inc. (Certificate of service authority, IXC, granted)	10/29/99
TO-99-519	Ozark Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99

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TA-99-379	PaeTec Communications, Inc. (Certificate of service authority, IXC, granted)	5/11/99
TA-99-293	Pahwa, Jeet d/b/a S.R. Telecommunications (Certificate of service authority, pay phone, granted)	1/26/99
TO-2000-264	Park ' View, Inc. (Name change to PNV.Net, Inc., recognized)	11/3/99
TA-99-405	Payroll Advance, Inc. (Certificate of service authority, interexchange and local exchange telecommunications services, granted)	12/23/99
TA-2000-234	P.D.S., Inc. d/b/a Phone Debit Systems, Inc. (Certificate of service authority, IXC, granted)	10/26/99
TO-99-531	Peace Valley Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-2000-246	Peebles, Enoch (Certificate of service authority, pay phone, granted)	10/14/99
TA-99-603	PF. Net, LLC (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	7/26/99

UNREPORTED UTILITY CASES

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TD-98-308	PhoneTel Technologies, Inc. (Certificate of service authority, pay phone, canceled)	3/25/99
TA-2000-271	Plescia, Anthony D. (Certificate of service authority, pay phone, granted)	11/18/99
TA-99-574	PNG Telecommunications, Inc. (Certificate of service authority, IXC, granted)	7/6/99
TA-2000-350	Powercom Corporation (Certificate of service authority, IXC, granted)	1/6/00
TO-99-242	Preferred Carrier Services, Inc. (Interconnection agreement with Sprint Missouri, Inc. d/b/a Sprint, granted)	2/4/99
TM-99-83	Premiere Communications, Inc. (Acquisition of National Collegiate, Inc. by Premiere, granted)	12/1/98
TM-99-381	Primus Telecommunications, Inc. (Merger into TresCom USA, Inc., granted)	5/11/99
TM-99-611	Primus Telecommunications, Inc. (Transfer of assets of Telegroup to Primus, granted)	8/5/99
TM-99-611	Primus Telecommunications, Inc. and Telegroup, Inc. (Transfer to Primus the assets of Telegroup, order canceling certificate and authorizing withdrawal and cancellation of tariffs)	1/11/00
TD-2000-42	Princeton Telecommunications Corporation (Certificate of service authority, IXC, canceled)	8/24/99
TA-2000-31	Prism Missouri Operations, LLC (Certificate of service authority, interexchange, basic local and non-switched private line local exchange telecommunications services, granted)	12/30/99
TA-99-288	Promise-Net International, Ltd. (Certificate of service authority, IXC, granted)	2/1/99
TD-2000-266	Public Pay Telephone, Inc. (Certificate of service authority, pay phone, canceled)	10/21/99
WO-99-561	Public Water Supply District #1 of Nodaway County & City of Maryville (Territorial agreement, approved)	9/2/99

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TA-99-250	Quick-Tel Communications, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	4/15/99
TO-99-413	Quick-Tel Communications, Inc. (Interconnection agreement with Southwestern Bell, approved)	6/1/99

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TO-99-619	Reconex, Inc. (Master resale agreement with Sprint Missouri, Inc., approved)	7/30/99
TA-99-478	RDST, Inc. (Certificate of service authority, IXC, granted)	5/24/99
TO-99-296	REN-TEL Communications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	3/4/99

WM-99-238	Riverside Utility Company, Inc., Capital Utilities, Inc., Foxfire Utility Company, Inc. (Sale and transfer of stock to AquaSource, Inc., granted)	2/4/99
TO-99-520	Rock Port Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-568	Rocky Mountain Broadband, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications service, granted)	6/21/99
TA-99-567	Rocky Mountain Broadband, Inc. (Certificate of service authority, basic local exchange telecommunications service, granted)	8/10/99
TA-99-479	Roderick, Glen J. (Certificate of service authority, pay phone, granted)	5/28/99
TA-2000-367	Rosacker, John Jay (Certificate of service authority, pay phones, granted)	1/20/00
TM-99-580	RSL COM U.S.A., Inc. (Transfer of assets from One Step Billing, Inc. to RSL COM U.S.A., Inc., granted)	8/24/99

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TA-2000-39	Satlink 3000, Inc. (Certificate of service authority, IXC, granted)	9/16/99
TA-2000-260	SBC Advanced Solutions, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	11/8/99
TO-2000-261	SBC Advanced Solutions, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	12/1/99
TA-99-229	Schrage, Thomas A. (Certificate of service authority, pay phone, granted)	12/23/98
TA-2000-187	Schult Communication, Inc. (Certificate of service authority, pay phones, granted)	9/24/99
TO-99-521	Seneca Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TA-99-251	Secured Technologies, L.C. (Certificate of service authority, IXC, granted)	1/12/99
TM-2000-3	Shared Communications Services, Inc. (Merger with Trailblazer Acquisition Corporation, granted)	8/10/99
TA-99-206	Simply Local Services, Inc. (Certificate of service authority, basic local telecommunications services on a resold basis, granted)	3/23/99
TO-99-329	Simply Local Services, Inc. (Resale agreement with Southwestern Bell Telephone Company, granted)	4/8/99
TA-2000-67	Single Billing Services, Inc. d/b/a Asian American Association (Certificate of service authority, IXC and nonswitched local exchange telecommunications service, granted)	9/13/99

TM-98-159	SmarTalk Teleservices, Inc., ConQuest Long Distance Corp. (Merger involving SmarTalk, SMTK Acquisition Corp. II and ConQuest Telecommunication Services Corp., approved)	12/15/98
TM-98-79	SmarTalk TeleServices, Inc. (Merger of SmarTel Communications, Inc. into SmarTalk, granted)	4/15/99
GR-97-234	Southern Missouri Gas Company (1996-1997 Actual Cost Adjustment, order approving agreement)	1/12/99
TM-2000-219	Southwestern Bell Telephone Company (Transfer of certain assets to SBCS Switches, Inc., granted)	10/21/99
TD-2000-348	Southwest Missouri Cable TV, Inc. (Certificate of service authority, IXC and local exchange telecommunications services, canceled)	12/3/99
TA-99-269	Special Accounts Billing Group, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	1/14/99
WR-2000-349	Spokane Highlands Water Company (Water rate increase granted) ..	12/28/99
WM-99-255	Spring Valley Water Company (Sale of assets to Riverside Utility Company, approved)	1/28/99
TO-99-436	Sprint Missouri, Inc. (Interconnection agreement with PageNet, Inc., granted)	6/17/99
TO-99-585	Sprint Missouri, Inc. d/b/a Sprint (Interconnection agreement with dPi-Teleconnect, L.L.C., granted)	7/23/99
TO-99-618	Sprint Missouri, Inc. (Commercial mobile radio services interconnection agreement with Nextel West Corporation, granted)	8/31/99
TO-2000-102	Sprint Missouri, Inc. (Interconnection agreement with Dakota Services Limited, granted)	10/14/99
TO-2000-257	Sprint Missouri, Inc. (Master resale agreement with Now Communications, Inc., approved)	11/30/99
TO-2000-351	Sprint Missouri, Inc. (Interconnection agreement with Fidelity Communications Services I, Inc., approved)	1/11/00
TO-99-198	Sprint Spectrum L.P. d/b/a Sprint PCS (Interconnection agreement with Sprint Missouri, Inc., granted)	2/1/99
TA-99-600	St. Andrews Telecommunications, L.L.C. (Certificate of service authority, IXC, granted)	7/28/99
TM-99-274	Startec Global Communications Corp. (SGCC) and Startec Global Licensing Company (SGLC) (Transfer of selected assets from SGCC to SGLC, granted)	2/3/99
TA-99-226	Startec Global Licensing Company, Inc. (Certificate of service authority, IXC, granted)	2/3/99
TA-2000-194	Steelville Long Distance, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications service, granted)	9/20/99

TO-99-522	Steelville Telephone Exchange, Inc. (IntraLATA dialing parity plan, approved)	6/10/99
TF-99-318	Steelville Telephone Exchange, Inc. (Financing case, order approving agreement)	9/2/99
TD-99-377	Stephens, Larry (Certificate of service authority, pay phone, canceled)	3/18/99
TO-99-177	Sterling International Funding, Inc. (Name change to 1-800-RECONEX, Inc., granted)	3/18/99
TA-2000-338	Sterling Time Company (Certificate of service authority, IXC, granted)	1/5/00
TA-99-417	St. John's Mercy Health System (Certificate of service authority, STS, granted)	5/12/99
GR-98-392	St. Joseph Light & Power (1997-98 Actual Cost Adjustment, order establishing ACA balance and closing case)	7/22/99
TA-99-612	Stimage, Johnny J. (Certificate of service authority, pay phone, granted)	7/19/99
WF-99-300	St. Louis County Water Company (Order approving financing)	3/2/99
TA-2000-327	Stone, Patricia L. d/b/a Future Talk (Certificate of service authority, pay phone, granted)	12/8/99
TA-2000-61	Stouffer Communications, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	9/1/99
TO-99-523	Stoutland Telephone Company, New London Telephone Company & Orchard Farm Telephone Company (IntraLATA dialing parity plan, approved)	6/10/99
TD-2000-28	Strategic Telecom Systems, Inc. (Certificate of service authority, IXC, canceled)	8/24/99
TA-99-54	Supra Telecommunications and Information Systems, Inc. (Certificate of service authority, basic local, local exchange and IXC services, granted)	4/29/99

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TM-98-171	Talton Invision, Inc. (Certificate of service authority, IXC, canceled) ..	12/7/98
TM-99-187	Talton Invision, Inc., AmeriTel Pay Phone, Inc. and Talton STC, Inc. (Merger, granted)	12/22/98
TM-97-527	Talton STC (Certificate of service authority, IXC, canceled)	12/7/98
TO-99-487	TCG Kansas City, Inc. (IntraLATA presubscription implementation plan, approved)	6/10/99
TO-99-489	TCG St. Louis, Inc. (IntraLATA presubscription implementation plan, approved)	6/10/99
TO-99-558	TCG St. Louis, Inc. and TCG Kansas City, Inc. (Interconnection agreement, Southwestern Bell Telephone Company, granted) ...	7/23/99

TO-2000-267	TDS Telecommunications Corporation (Interconnection agreement with Sprint Spectrum L.P., approved)	12/2/99
TD-99-166	Tel-Central Communications, Inc. (Certificate of service authority, IXC, canceled)	2/9/99
TA-2000-220	Telecommunications Cooperative Network, Inc. d/b/a TCN, Inc. (Certificate of service authority, reseller of IXC, granted)	12/14/99
TM-99-222	Telecom Resources, Inc. d/b/a TRINetwork, Inc. (TRI) (Acquisition of control of TRI by Advanced Communications Group, Inc., granted)	3/2/99
TO-99-299	Teligent, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	4/5/99
TO-2000-262	Tel-Save, Inc. d/b/a The Phone Company (Name change to Talk.com Holding Corp. d/b/a The Phone Company, acknowledged)	10/13/99
TA-99-333	The Free Network, L.L.C. (Certificate of service authority, IXC, granted)	4/19/99
TA-99-115	The Pager Company (Certificate of service authority, basic local and local exchange telecommunications services, granted)	4/12/99
TO-99-448	The Pager Company (Interconnection agreement with Southwestern Bell Telephone Company, approved)	5/25/99
TD-99-204	The Southland Corporation (Certificate of service authority, IXC, canceled)	12/15/98
TA-99-486	TLC Next Generation International Holdings, L.L.C. (Certificate of service authority, basic local telecommunications services, granted)	9/2/99
TA-2000-188	TON Services, Inc. (Certificate of service authority, IXC, granted)	9/27/99
TA-2000-237	Trans National Communications International, Inc. (Certificate of service authority, IXC, granted)	10/20/99
TO-2000-360	Trans National Telecommunications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	1/13/00
TA-2000-55	TransNet Connect, Inc. (Certificate of service authority, IXC, granted)	8/30/99
TO-99-343	TranStar Communications, L.L.C. (Resale agreement with Southwestern Bell Telephone Company, granted)	4/13/99
TA-99-375	TranStar Communications, L.L.C. (Certificate of service authority, basic local exchange telecommunications services, granted)	6/10/99
TA-2000-40	Twister Communications Network, Inc. (Certificate of service authority, IXC, granted)	8/30/99
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EM-98-391	Union Electric Company d/b/a AmerenUE (Sale of certain electric distribution facilities to the City of Rolla, granted)	12/15/98

UNREPORTED UTILITY CASES

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EO-98-401	Union Electric Company d/b/a AmerenUE (Authorization to manage sulfur dioxide emission allowance inventory, agreement approved)	12/16/98
EM-99-106	Union Electric Company d/b/a AmerenUE and City of Kennett (Territorial agreement, approved)	12/30/98
EO-99-146	Union Electric Company d/b/a AmerenUE and Crawford Electric Cooperative, Inc. (Territorial agreement, Washington County, approved)	1/28/99
EM-99-196	Union Electric Company d/b/a AmerenUE (Sale of assets to Gates Rubber Company, granted)	3/4/99
EM-99-195	Union Electric Company d/b/a AmerenUE (Sale of assets to BioKyowa, Inc., granted)	3/16/99
EM-99-230	Union Electric Company d/b/a AmerenUE (Sale of assets to First Morgan L.L.C., granted)	5/10/99
EO-99-475	Union Electric Company d/b/a AmerenUE (Change of electric service provider and facilities with Ozark Border Electric Cooperative, City of Williamsville, granted)	6/23/99
EM-99-550	Union Electric Company d/b/a AmerenUE (Sale of assets, 69/4kV substation and 2.7 miles of a 69kV radial distribution line to City of Marceline, approved)	7/6/99
EM-99-569	Union Electric Company d/b/a AmerenUE (Sale of assets, 34400 V Federal Pacific transformer to Doe Run Company, granted)	7/8/99
EM-99-373	Union Electric Company d/b/a AmerenUE (Sale of assets to the Board of Municipal Utilities of the City of Sikeston, approved)	8/9/99
GR-97-545	Union Electric Company d/b/a AmerenUE (1997-1998 Actual Cost Adjustment case)	8/10/99
TA-99-414	United States Advanced Network, Inc. (Certificate of service authority, IXC, granted)	5/6/99
TA-99-58	United States Telecommunications, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	1/12/99
TO-99-211	United States Telecommunications, Inc. (Interconnection agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated, granted)	2/2/99
TO-99-212	United States Telecommunications, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, granted)	2/4/99
TO-99-358	United States Telecommunications, Inc. (Interconnection agreement with Sprint Missouri d/b/a Sprint, granted)	5/11/99
TD-97-346	United Telephone Long Distance Company of the Midwest (Certificate of service authority, IXC, canceled)	3/5/99
TA-99-215	Uni-Tel Communications Group, Inc. (Certificate of service authority, IXC, granted)	12/21/98

TA-99-52	Universal Telephone (Certificate of service authority, basic local exchange telecommunications services, granted)	1/19/99
TO-99-463	Universal Telephone (Interconnection agreement with Southwestern Bell Telephone Company, granted)	5/26/99
TD-2000-38	U.S. Osiris Corporation (Certificate of service authority, IXC, canceled)	8/16/99
TD-99-426	U.S. South Communications, Inc. d/b/a Incomm (Certificate of service authority, IXC, canceled)	4/20/99
TO-2000-254	US West Interprise America, Inc. (Interconnection agreement with Southwestern Bell Telephone Company, approved)	12/14/99
TD-99-278	USX Consultants, Inc. (Certificate of service authority, IXC, canceled)	1/25/99
EF-99-259	UtiliCorp United, Inc. (Order authorizing declaration of a stock dividend)	1/21/99
EM-99-369	UtiliCorp United, Inc. d/b/a Missouri Public Service (Power sales agreement with MEP Pleasant Hill, L.L.C., granted)	4/22/99
GA-98-509	UtiliCorp United, Inc. d/b/a Missouri Public Service (Certificate of public convenience and necessity to provide natural gas service in a portion of Pettis County near Sedalia, granted)	5/11/99
EM-99-551	UtiliCorp United, Inc. d/b/a Missouri Public Service (Sale of assets, existing streetlighting system to the City of Kansas City, granted)	7/27/99

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TA-99-570	Veselka, Randall D. (Certificate of service authority, pay phone, granted)	7/21/99
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SA-99-589	Warren County Sewer Co., Inc. (Certificate of public convenience and necessity to provide sewer service in Warren County to the Oak Grove Subdivision, granted)	11/4/99
TA-99-153	Warren, Jeff C. (Certificate of service authority, pay phones, granted)	12/7/98
TM-2000-18	Washoe Technology Corporation (Acquisition of Common Concerns, Inc., granted)	9/23/99
TA-2000-208	WebNet Communications, Inc. (Certificate of service authority, IXC, granted)	10/1/99
TA-99-312	Wellston, City of (Certificate of service authority, pay phone, granted)	2/26/99
TD-2000-263	WinStar Gateway Network, Inc. (Certificate of service authority, IXC, canceled)	10/20/99
TA-99-219	WinStar Wireless, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	12/16/98

TM-99-218	WinStar Wireless, Inc. (WWI) and WinStar Wireless of Missouri, Inc. (WW-MO) (Merger of WW-MO with and into WWI, granted)	12/22/98
TO-99-491	Winstar Wireless, Inc. (IntraLATA dialing parity plan, approved)	6/10/99
WM-99-119	Woodland Manor Water Company (Sale of system to Stephen T. Fennema and Mona L. Fennema, approved)	2/17/99
TA-99-350	WorkNet Communications, Inc. (Certificate of service authority, IXC and non-switched local exchange telecommunications services, granted)	4/9/99
TA-99-292	WorkNet Communications, Inc. (Certificate of service authority, basic local exchange telecommunications services, granted)	5/20/99
TA-2000-207	Worldwide Fiber Networks, Inc. (Certificate of service authority, IXC and nonswitched local exchange telecommunications services, granted)	11/8/99
TA-2000-379	W2COM International, LLC (Certificate of service authority, IXC, granted)	1/27/00

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TA-99-284	Zalaudek, Jim d/b/a BellCom (Certificate of service authority, pay phone, granted)	1/26/99
TM-99-464	Zenex Long distance, Inc. (Sale of all issued and outstanding common stock of Zenex to Prestige Investments, Inc., granted)	6/1/99

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

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ACCOUNTING

II. DUTY TO KEEP PROPER ACCOUNTS

§8. Uniform accounts and rules

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.—Union Electric Company 8 MPSC 3d 465.

§9. Methods of accounting generally

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.—Union Electric Company 8 MPSC 3d 465.

III. PARTICULAR ITEMS

§39.1. OPEBS, Postretirement benefits other than pensions

A water utility's adoption of the FAS 106 accrual accounting standard was not an extraordinary expense that would justify the issuance of an Accounting Authority Order to permit the deferral of the excess of FAS 106 post-retirement benefits other than pension expenses over the pay-as-you-go amount that the utility had been booking since 1994.—United Water Missouri, Inc. 8 MPSC 3d 124.

§42. Accounting Authority Orders

An Accounting Authority Order is a device by which the Commission gives authorization to a utility to account for a cost in a different manner than called for by the Uniform System of Accounts.—United Water Missouri, Inc. 8 MPSC 3d 124.

An Accounting Authority Order usually grants a utility the authority to capitalize certain costs on its books that would normally be charged to expense. This deferral allows the utility the opportunity to seek recovery of the capitalized costs in a subsequent rate proceeding.—United Water Missouri, Inc. 8 MPSC 3d 124.

It is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case. Therefore, deferral of costs from one period to a subsequent rate case should be allowed only on a limited basis.—United Water Missouri, Inc. 8 MPSC 3d 124.

In order to justify the issuance of an Accounting Authority Order to permit the deferral of such costs, the costs incurred by the utility must result from an event or circumstance that is extraordinary, unusual and unique, and not recurring.—United Water Missouri, Inc. 8 MPSC 3d 124.

Extraordinary costs would include costs associated with Acts of God such as storm damage, fire or flood. However, extraordinary costs might also include costs resulting from man-made decisions that result in significantly changed business conditions.—United Water Missouri, Inc. 8 MPSC 3d 124.

A water utility's adoption of the FAS 106 accrual accounting standard was not an extraordinary expense that would justify the issuance of an Accounting Authority Order to permit the deferral of the excess of FAS 106 post-retirement benefits other than pension

expenses over the pay-as-you-go amount that the utility had been booking since 1994.—
United Water Missouri, Inc. 8 MPSC 3d 124.

CERTIFICATES

I. IN GENERAL

- §1. Generally**
- §2. Unauthorized operations and construction**
- §3. Obligation of the utility**

II. JURISDICTION AND POWERS

- §4. Jurisdiction and powers generally**
- §5. Jurisdiction and powers of Federal Commissions**
- §6. Jurisdiction and powers of the State Commission**
- §7. Jurisdiction and powers of local authorities**
- §8. Jurisdiction and powers over interstate operations**
- §9. Jurisdiction and powers over operations in municipalities**
- §10. Jurisdiction and powers over the organizations existing prior to the Public Service Commission law**

III. WHEN A CERTIFICATE IS REQUIRED

- §11. When a certificate is required generally**
- §12. Certificate from federal commissions**
- §13. Extension and changes**
- §14. Incidental services or operations**
- §15. Municipal limits**
- §16. Use of streets or public places**
- §17. Resumption after service discontinuance**
- §18. Substitution or replacement of facilities**
- §19. Effect of general laws, franchises and licenses**
- §20. Certificate as a matter of right**

IV. GRANT OR REFUSAL OF CERTIFICATE OR PERMIT - FACTORS

- §21. Grant or refusal of certificate generally**
 - §21.1. Public interest**
 - §21.2. Technical qualifications of applicant**
 - §21.3. Financial ability of applicant**
 - §21.4. Economic feasibility of proposed service**
- §22. Restrictions and conditions**
- §23. Who may possess**
- §24. Validity of certificate**
- §25. Ability and prospects of success**
- §26. Public safety**
- §27. Charters and franchises**
- §28. Contracts**
- §29. Unauthorized operation or construction**
- §30. Municipal or county action**
- §31. Rate proposals**
- §32. Competition or injury to competitor**
- §33. Immediate need for the service**
- §34. Public convenience and necessity or public benefit**
- §35. Existing service and facilities**

V. PREFERENCE BETWEEN RIVAL APPLICANTS - FACTORS

- §36. Preference between rival applicants generally
- §37. Ability and responsibility
- §38. Existing or past service
- §39. Priority of applications
- §40. Priority in occupying territory
- §41. Rate proposals

VI. CERTIFICATE OR PERMIT FOR PARTICULAR UTILITIES

- §42. Electric and power
- §43. Gas
- §44. Heating
- §45. Water
- §46. Telecommunications
- §46.1. Certificate of local exchange service authority
- §46.2. Certificate of interexchange service authority
- §46.3. Certificate of basic local exchange service authority
- §47. Sewers

VII. OPERATION UNDER TERMS OF THE CERTIFICATE

- §48. Operations under terms of the certificate generally
- §49. Beginning operation
- §50. Duration of certificate right
- §51. Modification and amendment of certificate generally

VIII. TRANSFER, MORTGAGE OR LEASE

- §52. Transfer, mortgage or lease generally
- §53. Consolidation or merger
- §54. Dissolution
- §55. Transferability of rights
- §55.1. Change of supplier
- §55.2. Territorial agreement
- §56. Partial transfer
- §57. Transfer of abandoned or forfeited rights
- §58. Mortgage of certificate rights
- §59. Sale of certificate rights

IX. REVOCATION, CANCELLATION AND FORFEITURE

- §60. Revocation, cancellation and forfeiture generally
- §61. Acts or omissions justifying revocation or forfeiture
- §62. Necessity of action by the Commission
- §63. Penalties

CERTIFICATES

IV. CERTIFICATE OR PERMIT FOR PARTICULAR UTILITIES**§46.2. Certificate of interexchange service authority**

The Commission approved a certificate of service authority to provide intrastate, interexchange telecommunications services for an incumbent local exchange company to whom the Commission had previously issued a temporary certificate of service authority.—
Alma Long Distance 8 MPSC 3d 383.

The Commission approved a certificate of service authority to provide intrastate, interexchange telecommunications services for an affiliate of an incumbent local exchange company to whom the Commission had previously issued a temporary certificate of service authority.—Northeast Missouri Long Distance 8 MPSC 3d 385.

The Commission granted an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Alma Long-Distance 8 MPSC 3d 357.

The Commission granted an affiliate of an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Northeast Missouri Long Distance 8 MPSC 3d 360.

§46.3. Certificate of basic local exchange service authority

Where SWBT terminated wireless-originated traffic on Complainants' network, SWBT was Complainants' customer and was required to compensate Complainants for terminating the traffic.—Chariton Valley/ Mid-Missouri Telephone vs Southwestern Bell Telephone Company 8 MPSC 3d 205.

DEPRECIATION

I. IN GENERAL

- §1. Generally
- §2. Right to allowance for depreciation
- §3. Reports, records and statements
- §4. Obligation of the utility

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commission
- §8. Jurisdiction and powers of local authorities

III. BASIS FOR CALCULATION

- §9. Generally
- §10. Cost or value
- §11. Property subject to depreciation
- §12. Methods of calculation
- §13. Depreciation rates to be allowed
- §14. Rates or charges for service

IV. FACTORS AFFECTING ANNUAL ALLOWANCE

- §15. Factors affecting annual allowance generally
- §16. Life of enterprise
- §17. Life of property
- §18. Past depreciation

- §19. Charges to maintenance and other accounts
- §20. Particular methods and theories
- §21. Experience
- §22. Life of property and salvage
- §23. Sinking fund and straight line
- §24. Combination of methods

V. RESERVES

- §25. Necessity
- §26. Separation between plant units
- §27. Amount
- §28. Ownership of fund
- §29. Investment and use
- §30. Earnings on reserve

VI. DEPRECIATION OF PARTICULAR UTILITIES

- §31. Electric and power
- §32. Gas
- §33. Heating
- §34. Telecommunications
- §35. Water

DEPRECIATION

III. BASIS FOR CALCULATION

§12. Methods of calculation

The Commission found that Laclede Gas Company failed to show that its depreciation calculation, with regard to net salvage was just and reasonable. The Commission determined that Staff's net salvage calculation would allow the company to recover the amounts it is currently spending for net salvage without over-recovering from its ratepayers is a just and reasonable result.—Laclede Gas Company 8 MPSC 3d 436.

IV. FACTORS AFFECTING ANNUAL ALLOWANCE

§22. Life of property and salvage

The Commission found that Laclede Gas Company failed to show that its depreciation calculation, with regard to net salvage was just and reasonable. The Commission determined that Staff's net salvage calculation would allow the company to recover the amounts it is currently spending for net salvage without over-recovering from its ratepayers is a just and reasonable result.—Laclede Gas Company 8 MPSC 3d 436.

VI. DEPRECIATION OF PARTICULAR UTILITIES

§32. Gas

The Commission found that Laclede Gas Company had not committed to removing its natural gas holders, that the company had already recovered its capital investment in the natural gas holders, and that there was no interim net salvage value of the natural gas holders. Therefore, the Commission determined that it was not just and reasonable for

current customers of the company to pay for the expense of removal when the ratepayers may receive no benefit from those payments.—Laclede Gas Company 8 MPSC 3d 436. The Commission found that Laclede Gas Company failed to show that its depreciation calculation, with regard to net salvage was just and reasonable. The Commission determined that Staff's net salvage calculation would allow the company to recover the amounts it is currently spending for net salvage without over-recovering from its ratepayers is a just and reasonable result.—Laclede Gas Company 8 MPSC 3d 436.

DISCRIMINATION

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Recovery of damages for discrimination
- §4. Recovery of discriminatory undercharge
- §5. Reports, records and statements

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the local authorities

III. RATES

- §9. Competitor's right to equal treatment
- §10. Free service
- §11. Inequality of rates
- §12. Methods of eliminating discrimination
- §13. Optional rates
- §14. Rebates
- §15. Service charge, meter rental or minimum charge
- §16. Special rates
- §17. Rates between localities
- §18. Concessions

IV. RATES BETWEEN CLASSES

- §19. Bases for classification and differences
- §20. Right of the utility to classify
- §21. Reasonableness of classification

V. RATES AND CHARGES OF PARTICULAR UTILITIES

- §22. Electric and power
- §23. Gas
- §24. Heating
- §25. Telecommunications
- §26. Sewer
- §27. Water

VI. SERVICE IN GENERAL

- §28. Service generally
- §29. Abandonment and discontinuance

- §30. Discrimination against competitor
- §31. Equipment, meters and instruments
- §32. Extensions
- §33. Preference during shortage of supply
- §34. Preferences to particular classes or persons

VII. SERVICE BY PARTICULAR UTILITIES

- §35. Electric and power
- §36. Gas
- §37. Heating
- §38. Sewer
- §39. Telecommunications
- §40. Water

DISCRIMINATION

No cases in this volume involved the question of discrimination.

ELECTRIC

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §4. Transfer, lease and sale
- §4.1. Change of suppliers
- §5. Charters and franchise
- §6. Territorial agreements

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally
- §8. Jurisdiction and powers of Federal Commissions
- §9. Jurisdiction and powers of the State Commission
- §10. Jurisdiction and powers of the local authorities
- §11. Territorial agreements
- §12. Unregulated service agreements

III. OPERATIONS

- §13. Operations generally
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return

- §24. **Services generally**
- §25. **Competition**
- §26. **Valuation**
- §27. **Accounting**
- §28. **Apportionment**
- §29. **Rate of return**
- §30. **Construction**
- §31. **Equipment**
- §32. **Safety**
- §33. **Maintenance**
- §34. **Additions and betterments**
- §35. **Extensions**
- §36. **Local service**
- §37. **Liability for damage**
- §38. **Financing practices**
- §39. **Costs and expenses**
- §40. **Reports, records and statements**
- §41. **Billing practices**
- §42. **Planning and management**
- §43. **Accounting Authority orders**
- §44. **Safety**
- §45. **Decommissioning costs**

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46. **Relations between connecting companies generally**
- §47. **Physical connection**
- §48. **Contracts**
- §48.1. **Qualifying facilities**
- §49. **Records and statements**

ELECTRIC

I. IN GENERAL

§1. Generally

Intervention applications of GST Steel and City of Kansas City, Missouri denied because they either did not have an actual interest in the proceeding or did not have an interest that was not otherwise protected by the parties already a party to the action.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission approved a stipulation and granted the application of Union Electric Company d/b/a AmerenUE for authority to participate in the Midwest Independent Transmission System Operator, Inc.—Union Electric Company 8 MPSC 3d 160.

The Commission approved a nonunanimous stipulation and agreement submitted by the parties which resolves all uncontested issues, not including the issue involving residential seasonal differentials and Rider E supplementary services, when no party requested a hearing on those uncontested issues.—Union Electric Company 8 MPSC 3d 407.

Because Intervenor Laclede is requesting a change in the rate design previously found just and reasonable by the Commission, Laclede bears the burden of proof that the present residential seasonal differential is not just and reasonable, and that the proposed rates or rate design is just and reasonable.—Union Electric Company 8 MPSC 3d 407.

The Commission denied Intervenor Laclede's request to open a new case to investigate Union Electric's Rider E supplementary service tariff because Laclede made no specific allegation of harm or proposal to change it tariff addressing Rider E Supplementary service and that same issue had recently been addressed in a complaint filed previously by Trigen-St. Louis.—Union Electric Company 8 MPSC 3d 407.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

The Commission does not guaranteed any specific rate determination for the territorial agreement transaction, whether or not expressly stated in the Commission order approving the territorial agreement.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission.—Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.—Union Electric Company 8 MPSC 3d 465.

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.—Union Electric Company 8 MPSC 3d 465.

There was insufficient evidence that the costs referred to as "Other Computer Costs" were more appropriately capitalized and amortized than expensed for expenses incurred before December 15, 1998.—Union Electric Company 8 MPSC 3d 465.

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the

expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary.—Union Electric Company 8 MPSC 3d 465.

The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.—Union Electric Company 8 MPSC 3d 510.

The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.—Union Electric Company 8 MPSC 3d 510.

The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to decommissioning funds flow through to ratepayers in the form of sharing credits.—Union Electric Company 8 MPSC 3d 510.

Commission approved agreement of the parties in case involving violations of the HVAC Act, Sections 386.754-386.764, RSMo 2000, which imposes restrictions on public utilities with respect to the business of selling, installing, repairing, and maintaining heating, ventilating and air conditioning equipment, wherein AmerenUE agreed to stop the offending conduct and further agreed to not engage in HVAC-related services prior to December 31, 2001, and Complainant agreed to seek the dismissal of this case and recommended that no fines be imposed upon AmerenUE.—Missouri Coalition for Fair Competition vs AmerenUE 8 MPSC 3d 234.

§3. Certificate of convenience and necessity

The submission of a non-unanimous stipulation and agreement did not change the applicant's obligation to meet the requirements imposed by statute and regulation to qualify for the certificate of convenience and necessity that it sought.—Empire District Electric 8 MPSC 3d 426.

Section 393.170.3, RSMo 1994, authorizes the Commission to grant a utility the authority to operate an electric system in a given geographical area if it shall "after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service."—Empire District Electric 8 MPSC 3d 426.

When considering the granting of a certificate of convenience and necessity, the term "necessity" does not mean "essential" or "absolutely indispensable" but that an additional service would be an improvement justifying its cost.—Empire District Electric 8 MPSC 3d 426.

In making a determination as to whether or not a certificate of convenience and necessity should be granted, the Commission has considered the following standards:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.

—Empire District Electric 8 MPSC 3d 426.

4 CSR 240-2.060(2)(F) does not require the applicant for an expansion of its service area to resubmit a feasibility study after submission of a non-unanimous stipulation and agreement that substantially reduced the service area for which it sought a certificate of convenience and necessity.—Empire District Electric 8 MPSC 3d 426.

The Commission approved an electric utility's application to expand its service area in Greene County, Missouri.—Empire District Electric 8 MPSC 3d 426.

§4. Transfer, lease and sale

The Commission approved the stipulation and agreement, in which the parties agreed to the terms and conditions of the merger of Western Resources Inc and KCP&L. The Commission found the stipulation and agreement in the public interest and reasonable.—Kansas City Power & Light Company 8 MPSC 3d 306.

§4.1. Change of suppliers

Where a municipal utility and a rural electric cooperative jointly sought Commission approval to transfer 102 customers of the Co-op to the City and 78 customers of the City to the Co-op in order to reduce duplication of facilities, enhance operating efficiency, and exchange stranded facilities, the proposed change of suppliers was in the public interest and the Commission would grant approval.—City of Fulton/Callaway Electric Cooperative 8 MPSC 3d 343.

§6. Territorial Agreements

The Commission found the following were not detrimental to the public interest and therefore should be approved: (1) the territorial and exchange agreement between AmerenUE and Boone; (2) the customer exchange between AmerenUE and Boone; (3) the facilities exchange between AmerenUE and Boone; and (4) AmerenUE's illustrative tariff sheets filed on February 11, 1999.—Union Electric Company/Boone Electric Co-op 8 MPSC 3d 92.

The Commission found the following were not detrimental to the public interest and therefore should be approved: a) the territorial agreement boundaries remain the same; b) AmerenUE customers listed in the joint application will be transferred to Ozark in accordance with the existing agreement; c) the existing Ozark members in the AmerenUE service area will not be transferred from Ozark to AmerenUE; no structure being served by Ozark will be transferred to AmerenUE without the express consent of the owner of the structure and the consent provision will apply to current owners of Ozark-served structures and their successors in title; d) any Ozark member in the AmerenUE service area may request to be transferred to AmerenUE and Ozark shall not withhold its consent to such transfer; e) if it is uneconomical or technically infeasible for AmerenUE to serve a structure at the time a transfer is requested, then Ozark agrees to continue to serve said structure until AmerenUE is able to implement the transfer with no charge to the new customer for such a transfer; f) Applicants will work together to transfer Ozark facilities in the AmerenUE service area in a manner that maximizes the benefits of the territorial agreement; g) if an Ozark member builds a residence on property owned by that member and presently served by Ozark and said residence is to be occupied by a relative of the owner of said property, then this new residence may also be served by Ozark; h) Ozark will pay AmerenUE \$974,000; and i) Water District No. 1 will remain as an Ozark member, but may elect at any time to transfer electric service to AmerenUE.—Union Electric Company 8 MPSC 3d 377.

The Commission does not guaranteed any specific rate determination for the territorial agreement transaction, whether or not expressly stated in the Commission order approving the territorial agreement.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

II. JURISDICTION AND POWERS

§9. Jurisdiction and powers of the State Commission

The Commission approved a nonunanimous stipulation and agreement submitted by the parties which resolves all uncontested issues, not including the issue involving residential seasonal differentials and Rider E supplementary services, when no party requested a hearing on those uncontested issues.—Union Electric Company 8 MPSC 3d 407.

The Commission denied Intervenor Laclede's request to open a new case to investigate Union Electric's Rider E supplementary service tariff because Laclede made no specific allegation of harm or proposal to change it tariff addressing Rider E Supplementary service and that same issue had recently been addressed in a complaint filed previously by Trigen-St. Louis.—Union Electric Company 8 MPSC 3d 407.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

Where an electric utility filed pleadings containing erroneous and misleading assertions of fact, upon which the Commission relied in ruling on a motion to compel discovery, the Commission had authority to convene a hearing so the utility might show cause why sanctions ought not be imposed.—GST Steel vs Kansas City Power & Light 8 MPSC 3d 499.

Where Union Electric's Illinois affiliate, AmerenCIPS, proposed to transfer its assets to a new entity, Genco, which would be an Exempt Wholesale Generator, and Ameren Corporation was a registered holding company which owned both Union Electric, a public utility subject to regulation by this Commission, and AmerenCIPS, and Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA), codified at 15 U.S.C. 79z-5a(c), provides that, in the case of "an affiliate of a registered holding company," a "determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company," that "allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law," the Commission determined that, so long as certain conditions suggested by its Staff were imposed, that the transaction would benefit consumers, was in the public interest, and would not violate any law of Missouri, and should therefore be approved.—Union Electric 8 MPSC 3d 503.

The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.—Union Electric Company 8 MPSC 3d 510.

The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.—Union Electric Company 8 MPSC 3d 510.

The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to

decommissioning funds flow through to ratepayers in the form of sharing credits.—Union Electric Company 8 MPSC 3d 510.

III. OPERATIONS

§14. Rules and regulations

The Commission terminated a variance previously granted to an electric utility because the meter replacement project for which the variance was needed had been completed.—Kansas City Power & Light Company 8 MPSC 3d 519.

§17. Abandonment and discontinuance

On January 27, 2000, the Commission ordered that the Unanimous Stipulation and Agreement filed on December 20, 1999, is approved, and that Kansas City Power and Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$2,303,856.—Kansas City Power & Light Company 8 MPSC 3d 516.

§20. Rates

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

§21. Refunds

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

§22. Revenue

The Commission approved a unanimous stipulation and agreement whereby an electric utility agreed to reduce its gross annual electric service revenues by a total of \$2,500,000.—St. Joseph Light & Power Company 8 MPSC 3d 295.

§24. Services generally

Where AmerenUE had previously agreed to file with the Commission an experimental retail wheeling pilot program for 100 MW of electric power, but later sought to be relieved of this obligation on the grounds that it would entail significant expense while yielding only information now available elsewhere, the Commission would grant AmerenUE's request.—Union Electric Company 8 MPSC 3d 495.

§32. Safety

The Commission found that safety would not be affected by approval of a tariff that would allow independent contractors rather than utility employees to do trenching work for new electric lines.—Missouri Public Service 8 MPSC 3d 266.

§36. Local service

The Commission approved an agreement that provided that AmerenUE would continue its Missouri retail jurisdiction expense accruals and trust fund payments for decommissioning of the Callaway nuclear power plant at current levels without any change in its Missouri retail jurisdictional rates and that annual decommissioning costs in the amount of \$6,214,184 are, and should continue to be, included in AmerenUE's cost of service and reflected in its current rates for ratemaking purposes.—Union Electric Company 8 MPSC 3d 497.

§45. Decommissioning costs

The Commission approved Bankers Trust Company as successor trustee for an electric utility's tax qualified nuclear decommissioning fund.—Kansas City Power & Light Company 8 MPSC 3d 95.

The Commission approved The Bank of New York as successor trustee for an electric utility's tax qualified nuclear decommissioning fund.—Kansas City Power & Light Company 8 MPSC 3d 332.

On January 27, 2000, the Commission ordered that the Unanimous Stipulation and Agreement filed on December 20, 1999, is approved, and that Kansas City Power and Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$2,303,856.—Kansas City Power & Light Company 8 MPSC 3d 516.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

EVIDENCE, PRACTICE AND PROCEDURE

I. IN GENERAL

- §1. Generally
- §2. Jurisdiction and powers
- §3. Judicial notice; matters outside the record
- §4. Presumption and burden of proof
- §5. Admissibility
- §6. Weight, effect and sufficiency
- §7. Competency
- §8. Stipulation

II. PARTICULAR KINDS OF EVIDENCE

- §9. Particular kinds of evidence generally
- §10. Admissions
- §11. Best and secondary evidence
- §12. Depositions
- §13. Documentary evidence
- §14. Evidence by Commission witnesses
- §15. Opinions and conclusions; evidence by experts
- §16. Petitions, questionnaires and resolutions
- §17. Photographs
- §18. Record and evidence in other proceedings
- §19. Records and books of utilities
- §20. Reports by utilities
- §21. Views

III. PRACTICE AND PROCEDURE

- §22. Parties
- §23. Notice and hearing
- §24. Procedures, evidence and proof
- §25. Pleadings and exhibits
- §26. Burden of proof
- §27. Finality and conclusiveness

- §28. Arbitration
- §29. Discovery
- §30. Settlement procedures
- §31. Mediator
- §32. Confidential evidence

EVIDENCE, PRACTICE AND PROCEDURE

I. IN GENERAL

§1. Generally

The Commission granted reconsideration and rehearing on a specific issue where an error was made by the parties when calculating the rate scenarios as directed by the Commission, and where that error had not been discovered before the Report and Order was issued. The Commission found that its decisions in every case should be deliberate and based upon competent and substantial evidence.—Missouri Gas Energy 8 MPSC 3d 2.

The Commission granted rehearing on a specific issue to allow further evidence to be taken on the issue of valuation of an adjustment to the revenue requirement where that adjustment had been stipulated to by the parties, but where no adjustment in the final revenue requirement calculations was made.—Missouri Gas Energy 8 MPSC 3d 2.

The Commission denied rehearing and reconsideration where the gas company argued that the Commission incorrectly interpreted its own order.—Missouri Gas Energy 8 MPSC 3d 2.

The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.—Union Electric Company 8 MPSC 3d 510.

The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.—Union Electric Company 8 MPSC 3d 510.

The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to decommissioning funds flow through to ratepayers in the form of sharing credits.—Union Electric Company 8 MPSC 3d 510.

§2. Jurisdiction and powers

The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.—Union Electric Company 8 MPSC 3d 510.

The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.—Union Electric Company 8 MPSC 3d 510.

The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to decommissioning funds flow through to ratepayers in the form of sharing credits.—Union Electric Company 8 MPSC 3d 510.

§4. Presumption and burden of proof

The party asserting the positive of a proposition bears the burden of proving that proposition. *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo banc 1994).—Associated Natural Gas 8 MPSC 3d 64.

Because Intervenor Laclede is requesting a change in the rate design previously found just and reasonable by the Commission, Laclede bears the burden of proof that the present residential seasonal differential is not just and reasonable, and that the proposed rates or rate design is just and reasonable.—Union Electric Company 8 MPSC 3d 407.

§5. Admissibility

The Commission denied Staff's motion to strike the testimony of telephone company's witness at the hearing where the Commission found that by a referencing "replacement codes" in a footnote of the tariff the parties had been put on notice that a service in the tariff was only to be considered an unbundled service. In addition, the Commission found that Staff had demonstrated it had notice of the issue by questioning the witness about the footnote containing the issue and that the intervenor had notice of the issue because the intervenor's witness referred to the issue in his testimony.—GTE Midwest, Inc. 8 MPSC 3d 26.

§6. Weight, effect and sufficiency

The Commission rejected a non-unanimous stipulation and agreement which did not provide for settlement of the actual issues in dispute; rather, it provided for an interim measure that would permit a competitive local exchange company (CLEC) to join in the metropolitan calling area (MCA) plan pending the Commission's final decision. The Commission determined that the evidence in the supporting affidavits was not sufficient to support implementation of an expedited interim measure. The Commission also determined that consumer confusion and dissatisfaction may be avoided by maintaining the status quo until the Commission can make its final decision.—Investigation MCA 8 MPSC 3d 419.

The Commission found that a proposed cap on advertising expenses was not supported by competent and substantial evidence and that in order to fulfill its duty of determining if the company's expenses on advertising were prudent, the Commission must do a review of the advertising expenses. The Commission reaffirmed that it will continue to follow the standards as set out in *Re: Kansas City Power and Light Company*, 28 Mo. P.S.C. (N.S.) 228 (1986).—Laclede Gas Company 8 MPSC 3d 436.

§8. Stipulation

Although two parties did not sign a stipulation and agreement, their failure to request a hearing constituted a waiver of their right to a hearing and permitted the Commission to treat the stipulation and agreement as unanimous.—McDonald County Telephone Company 8 MPSC 3d 110.

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286.—Missouri Gas Energy 8 MPSC 3d 129.

The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations

on effluent produced by West Elm's sewer system.—West Elm Place Corporation 8 MPSC 3d 137.

The Commission found the unanimous stipulation and agreement, reached by the parties agreement after the Commission's decision in Case Nos. GR-95-273 and GR-96-192, was reasonable and should be approved. The parties agreed that no Utilicorp Energy Services adjustments be made, that an overrun penalties/scheduling fees adjustment of \$64,044 be made in the 1998/1999 ACA filing, and that no adjustment be made on the calculation of the cash out/imbalance.—UtiliCorp United 8 MPSC 3d 162.

The Commission approved an agreement stipulating that: (1) the Commission issued an order in Case No. SM-99-287 authorizing the sale of Imperial Utility Corporation's sewer assets to Rock Creek Public Sewer District; (2) Imperial and House Springs are owned and operated by the same entity, *viz.*, EPCO, Incorporated; (3) Imperial, House Springs, and EPCO are all currently under receivership in the Circuit Court of Saint Louis County, Missouri; (4) the Commission conditioned the distribution of the net proceeds of the Imperial sale on the payment of the assessments owed by Imperial and House Springs; and (5) the parties to the Imperial sale anticipated the closing of the sale "within a couple of weeks" (of May 10, 1999), although the final distribution of the sale proceeds to the owners of Imperial was not anticipated in the near future; (7) House Springs admitted that it owed assessments to the Commission in the amount of \$41,093.52; (8) in the event of the sale of House Springs' assets, House Springs would provide, through an escrow agreement, for the payment of all assessments owed the Commission; (9) House Springs agreed that it would pay the said assessments immediately upon the closing of the House Springs' assets sale or at such time as the net proceeds of the Imperial sale are distributed to the owners of Imperial, whichever occurs first; and (10) Staff agreed to file a motion to dismiss with prejudice the complaint within one week after the full payment of the assessments owed by House Springs is received by the Commission.—PSC Staff vs House Springs Sewer Company 8 MPSC 3d 262.

The Commission approved the unanimous stipulation and agreement, finding the proposed rate increase and the rate design fair and reasonable. The stipulation and agreement approved proposed plan to implement a rate increase in two phases, approving a \$484,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective January 1, 2000, during the first phase and a \$267,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective December 1, 2000, during the second phase.—United Water Missouri 8 MPSC 3d 303.

The Commission approved the stipulation and agreement, in which the parties agreed to the terms and conditions of the merger of Western Resources Inc and KCP&L. The Commission found the stipulation and agreement in the public interest and reasonable.—Kansas City Power & Light Company 8 MPSC 3d 306.

The Commission approved a nonunanimous stipulation and agreement submitted by the parties which resolves all uncontested issue, not including the issue involving residential seasonal differentials and Rider E supplementary services, when no party requested a hearing on those uncontested issues.—Union Electric Company 8 MPSC 3d 407.

The submission of a non-unanimous stipulation and agreement did not change the applicant's obligation to meet the requirements imposed by statute and regulation to qualify for the certificate of convenience and necessity that it sought.—Empire District Electric 8 MPSC 3d 426.

The submission of a non-unanimous stipulation and agreement did not change the applicant's obligation to meet the requirements imposed by statute and regulation to qualify for the certificate of convenience and necessity that it sought.—Empire District Electric 8 MPSC 3d 426.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary. — Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission. —Union Electric Company 8 MPSC 3d 465.

Where some parties filed a stipulation and agreement but that stipulation and agreement was opposed by one of the parties, the Commission considered the non-unanimous stipulation and agreement to be merely a change of position by the signatory parties from their original positions, to the stipulated position.—Empire District Electric 8 MPSC 3d 426.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case. — Union Electric Company 8 MPSC 3d 465.

The Commission rejected a non-unanimous stipulation and agreement without hearing on the stipulation and agreement even though some parties had requested a hearing under the Commission's procedural rules. The Commission found that rule 4 CSR 240-2.115 was intended to be applied when some of the parties had reached an agreement as to the underlying issues of the case. However, the Commission found that in this instance, the signatories of the stipulation and agreement did not agree to resolve any of the issues in the case itself. Instead the signatories to the stipulation and agreement interjected an entirely separate issue of interim relief.—Investigation MCA 8 MPSC 3d 419.

II. PARTICULAR KINDS OF EVIDENCE

§9. Particular kinds of evidence generally

On January 27, 2000, the Commission ordered that the Unanimous Stipulation and Agreement filed on December 20, 1999, is approved, and that Kansas City Power and Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$2,303,856.—Kansas City Power & Light Company 8 MPSC 3d 516.

III. PRACTICE AND PROCEDURE

§22. Parties

Intervention applications of GST Steel and City of Kansas City, Missouri denied because they either did not have an actual interest in the proceeding or did not have an interest that was not otherwise protected by the parties already a party to the action.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission found good cause existed to allow intervention out of time of Intermedia Communications, Inc., where the company claimed that actions taken by Southwestern Bell Telephone Company since the passing of the intervention deadline made it necessary to participate in order to protect its interests.—Investigation MCA 8 MPSC 3d 419.

§23. Notice and hearing

The Commission denied Staff's motion to strike the testimony of telephone company's witness at the hearing where the Commission found that by a referencing "replacement codes" in a footnote of the tariff the parties had been put on notice that a service in the tariff was only to be considered an unbundled service. In addition, the Commission found that Staff had demonstrated it had notice of the issue by questioning the witness about the footnote containing the issue and that the intervenor had notice of the issue because the intervenor's witness referred to the issue in his testimony.—GTE Midwest, Inc. 8 MPSC 3d 26.

Although two parties did not sign a stipulation and agreement, their failure to request a hearing constituted a waiver of their right to a hearing and permitted the Commission to treat the stipulation and agreement as unanimous.—McDonald County Telephone Company 8 MPSC 3d 110.

§24. Procedures, evidence and proof

The Commission denied movant's arguments for a stay in a gas company's rate case where the Commission found no lack of due process and that its findings were based on competent and substantial evidence.—Missouri Gas Energy 8 MPSC 3d 2.

Complainant filed a complaint on October 1, 1998, against Respondent. On October 6, 1998, the Commission issued a Notice of Complaint, requiring an answer by November 6, 1998. Respondent late-filed an answer on November 12, 1998. On December 8, 1998, the Commission entered an order finding that the Respondent is in default and that all allegations set forth in the complaint are deemed admitted.—Reed vs Missouri Public Service 8 MPSC 3d 15.

The Commission denied SWBT's application for rehearing because the Commission anticipates that the area codes involved in the split will not exhaust until after the middle of the next decade and, is, therefore, in compliance with the Industry Numbering Committee's guidelines.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.—Union Electric Company 8 MPSC 3d 510.

The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.—Union Electric Company 8 MPSC 3d 510.

The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to decommissioning funds flow through to ratepayers in the form of sharing credits.—Union Electric Company 8 MPSC 3d 510.

§25. Pleadings and exhibits

Complainant filed a complaint on October 1, 1998, against Respondent. On October 6, 1998, the Commission issued a Notice of Complaint, requiring an answer by November 6, 1998. Respondent late-filed an answer on November 12, 1998. On December 8, 1998, the Commission entered an order finding that the Respondent is in default and that all allegations set forth in the complaint are deemed admitted.—Reed vs Missouri Public Service 8 MPSC 3d 15.

Where Public Counsel applied to the Commission to open a docket within which to consider GTE Midwest, Inc.'s alleged intention to sell or exchange certain of its Missouri exchanges, the Commission's procedural rules required dismissal of the application because it did not cite any statutory authority for the relief sought by Public Counsel.—GTE Midwest, Inc. 8 MPSC 3d 53.

§26. Burden of proof

The burden of proof to show that a proposed tariff is just and reasonable is upon the company filing the tariff.—GTE Midwest, Inc. 8 MPSC 3d 26.

Because Intervenor Laclede is requesting a change in the rate design previously found just and reasonable by the Commission, Laclede bears the burden of proof that the present residential seasonal differential is not just and reasonable, and that the proposed rates or rate design is just and reasonable.—Union Electric Company 8 MPSC 3d 407.

§27. Finality and conclusiveness

Complainant filed a complaint on October 1, 1998, against Respondent. On October 6, 1998, the Commission issued a Notice of Complaint, requiring an answer by November 6, 1998. Respondent late-filed an answer on November 12, 1998. On December 8, 1998, the Commission entered an order finding that the Respondent is in default and that all allegations set forth in the complaint are deemed admitted.—Reed vs Missouri Public Service 8 MPSC 3d 15.

Where Staff sought reconsideration of the Commission's order granting price-cap status on the basis of the same arguments already presented to the Commission, the application for reconsideration would be denied. Where Public Counsel sought rehearing of the Commission's order granting price-cap status on the basis of matters irrelevant to the standard established by statute for determining price cap status, the application for rehearing would be denied.—GTE Midwest, Inc. 8 MPSC 3d 71.

Where certain utilities sought rehearing because the Commission did not include in its Report & Order all of the Findings of Fact and Conclusions of Law stipulated by the parties, the application would be denied where the Commission lacked authority to make the findings and conclusions sought by the parties.—Assessment public utilities 8 MPSC 3d 88.

The Commission determines that the effective date for the local reciprocal compensation obligation under the parties' Agreement shall be the effective date of that Agreement.—Mid-Missouri Cellular 8 MPSC 3d 102.

§28. Arbitration

Where parties could not agree on appropriate rates for line conditioning with respect to loops to be used for xDSL services and sought arbitration from the Commission, the Commission established rates based upon the evidence adduced by the parties.—Sprint Communications Company L.P./Southwestern Bell Telephone Company 8 MPSC 3d 274.

§29. Discovery

Public Counsel's motion to compel was denied because the Commission denied SWBT's application for rehearing, and when the North American Numbering Council recom-

mended that the Federal Communications Commission, Common Carriers Bureau, direct the North American Numbering Plan Administrator to issue a new area code, the underlying issue became moot.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

§30. Settlement procedures

Although two parties did not sign a stipulation and agreement, their failure to request a hearing constituted a waiver of their right to a hearing and permitted the Commission to treat the stipulation and agreement as unanimous.—McDonald County Telephone Company 8 MPSC 3d 110.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission.—Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.—Union Electric Company 8 MPSC 3d 465.

EXPENSE

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Financing practices
- §4. Apportionment
- §5. Valuation
- §6. Accounting

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. EXPENSES OF PARTICULAR UTILITIES

- §10. Electric and power
- §11. Gas
- §12. Heating
- §13. Telecommunications
- §14. Water
- §15. Sewer

IV. ASCERTAINMENT OF EXPENSES

- §16. Ascertainment of expenses generally
- §17. Extraordinary and unusual expenses
- §18. Comparisons in absence of evidence
- §19. Future expenses
- §20. Methods of estimating
- §21. Intercompany costs or dealings

V. REASONABLENESS OF EXPENSE

- §22. Reasonableness generally
- §23. Comparisons to test reasonableness
- §24. Test year and true up

VI. PARTICULAR KIND OF EXPENSE

- §25. Particular kinds of expenses generally
- §26. Accidents and damages
- §27. Additions and betterments
- §28. Advertising, promotion and publicity
- §29. Appraisal expense
- §30. Auditing and bookkeeping
- §31. Burglary loss
- §32. Casualty losses and expenses
- §33. Capital amortization
- §34. Collection fees
- §35. Construction
- §36. Consolidation expense
- §37. Depreciation
- §38. Deficits under rate schedules
- §39. Donations
- §40. Dues
- §41. Employee's pension and welfare
- §42. Expenses relating to property not owned
- §43. Expenses and losses of subsidiaries or other departments
- §44. Expenses of non-utility business
- §45. Expenses relating to unused property
- §46. Expenses of rate proceedings
- §47. Extensions
- §48. Financing costs and interest
- §49. Franchise and license expense

- §50. Insurance and surety premiums
- §51. Legal expense
- §52. Loss from unprofitable business
- §53. Losses in distribution
- §54. Maintenance and depreciation; repairs and replacements
- §55. Management, administration and financing fees
- §56. Materials and supplies
- §57. Purchases under contract
- §58. Office expense
- §59. Officers' expenses
- §60. Political and lobbying expenditures
- §61. Payments to affiliated interests
- §62. Rentals
- §63. Research
- §64. Salaries and wages
- §65. Savings in operation
- §66. Securities redemption or amortization
- §67. Taxes
- §68. Uncollectible accounts
- §69. Administrative expense
- §70. Engineering and superintendence expense
- §71. Interest expense
- §72. Preliminary and organization expense
- §73. Expenses incurred in acquisition of property
- §74. Demand charges
- §75. Expenses incidental to refunds for overcharges
- §76. Matching revenue/expense/rate base
- §77. Adjustments to test year levels
- §78. Isolated adjustments

EXPENSE

I. IN GENERAL

§6. Accounting

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.—Union Electric Company 8 MPSC 3d 465.

There was insufficient evidence that the costs referred to as “Other Computer Costs” were more appropriately capitalized and amortized than expensed for expenses incurred before December 15, 1998.—Union Electric Company 8 MPSC 3d 465.

IV. ASCERTAINMENT OF EXPENSES

§16. Ascertainment of expenses generally

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other

computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission. —Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case. —Union Electric Company 8 MPSC 3d 465.

§17. Extraordinary and unusual expenses

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.—Union Electric Company 8 MPSC 3d 465.

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary.—Union Electric Company 8 MPSC 3d 465.

V. REASONABLENESS OF EXPENSE

§22. Reasonableness generally

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary. —Union Electric Company 8 MPSC 3d 465.

VI. PARTICULAR KIND OF EXPENSE

§25. Particular kinds of expenses generally

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission

which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission. —Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case. —Union Electric Company 8 MPSC 3d 465.

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs. —Union Electric Company 8 MPSC 3d 465.

There was insufficient evidence that the costs referred to as "Other Computer Costs" were more appropriately capitalized and amortized than expensed for expenses incurred before December 15, 1998. —Union Electric Company 8 MPSC 3d 465.

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary.—Union Electric Company 8 MPSC 3d 465.

§33. Capital amortization

For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.—Union Electric Company 8 MPSC 3d 465.

§51. Legal expense

Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary. —Union Electric Company 8 MPSC 3d 465.

§78. Isolated adjustments

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a

proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

GAS

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the utility**
- §3. Certificate of convenience and necessity**
- §4. Abandonment or discontinuance**
- §5. Liability for damages**
- §6. Transfer, lease and sale**

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers of the State Commission**
- §8. Jurisdiction and powers of the Federal Commissions**
- §9. Jurisdiction and powers of local authorities**

III. CONSTRUCTION AND EQUIPMENT

- §10. Construction and equipment generally**
- §11. Leakage, shrinkage and waste**
- §12. Location**
- §13. Additions and betterments**
- §14. Extensions**
- §15. Maintenance**
- §16. Safety**

IV. OPERATION

- §17. Operation generally**
 - §17.1. Purchased Gas Adjustment (PGA)**
 - §17.2. Purchased Gas-incentive mechanism**
- §18. Rates**
- §19. Revenue**
- §20. Return**
- §21. Service**
- §22. Weatherization**
- §23. Valuation**
- §24. Accounting**
- §25. Apportionment**
- §26. Restriction of service**
- §27. Depreciation**
- §28. Discrimination**
- §29. Costs and expenses**
- §30. Reports, records and statements**
- §31. Interstate operation**
- §32. Financing practices**
- §33. Billing practices**
- §34. Accounting Authority orders**
- §35. Safety**

V. JOINT OPERATIONS

- §36. Joint operations generally
- §37. Division of revenue
- §38. Division of expenses
- §39. Contracts
- §40. Transportation
- §41. Pipelines

VI. PARTICULAR KIND OF EXPENSES

- §42. Particular kinds of expenses generally
- §43. Accidents and damages
- §44. Additions and betterments
- §45. Advertising, promotion and publicity
- §46. Appraisal expense
- §47. Auditing and bookkeeping
- §48. Burglary loss
- §49. Casualty losses and expenses
- §50. Capital amortization
- §51. Collection fees
- §52. Construction
- §53. Consolidation expense
- §54. Depreciation
- §55. Deficits under rate schedules
- §56. Donations
- §57. Dues
- §58. Employee's pension and welfare
- §59. Expenses relating to property not owned
- §60. Expenses and losses of subsidiaries or other departments
- §61. Expenses of non-utility business
- §62. Expenses relating to unused property
- §63. Expenses of rate proceedings
- §64. Extensions
- §65. Financing costs and interest
- §66. Franchise and license expense
- §67. Insurance and surety premiums
- §68. Legal expense
- §69. Loss from unprofitable business
- §70. Losses in distribution
- §71. Maintenance and depreciation; repairs and replacements
- §72. Management, administration and financing fees
- §73. Materials and supplies
- §74. Purchases under contract
- §75. Office expense
- §76. Officers' expenses
- §77. Political and lobbying expenditures
- §78. Payments to affiliated interests
- §79. Rentals
- §80. Research
- §81. Salaries and wages
- §82. Savings in operation
- §83. Securities redemption or amortization
- §84. Taxes
- §85. Uncollectible accounts

- §86. Administrative expense
- §87. Engineering and superintendence expense
- §88. Interest expense
- §89. Preliminary and organization expense
- §90. Expenses incurred in acquisition of property
- §91. Demand charges
- §92. Expenses incidental to refunds for overcharges

GAS

I. IN GENERAL

§3. Certificate of convenience and necessity

The Commission approved a stipulation and agreement that resolved conflicting applications for establishment of service areas by two gas utilities in and near Wentzville, Missouri.—Union Electric Company/Laclede Gas Company 8 MPSC 3d 139.

§6. Transfer, lease and sale

The Commission approved an application from a gas company to immediately acquire up to five percent of the outstanding common stock of an out-of-state gas company in anticipation of a pending merger, but only with certain conditions, requested by the Staff of the Commission, designed to protect the company's Missouri ratepayers.—Southern Union Company 8 MPSC 3d 268.

The Commission granted a gas utility's motion for rehearing and deleted a condition that imposed a definition of ownership equity on the Commission's approval of the utility's application for authority to purchase up to and including five percent of the outstanding stock of an out-of-state utility in anticipation of a merger when ownership equity was at issue in the underlying merger case but was not relevant to the instant application.—Southern Union Company 8 MPSC 3d 300.

The Commission approved a stipulation and agreement whereby a gas utility was authorized to acquire and merge with an out-of-state utility.—Southern Union Company 8 MPSC 3d 392.

II. JURISDICTION AND POWERS

§7. Jurisdiction and powers of the State Commission

Section 393.190.2 statute requires prior Commission approval of an acquisition of stock or bonds. Such approval can only be meaningful if the terms of the acquisition are known. Approval of an acquisition in general terms, when none of the specifics are known would render the provisions of the statute meaningless.—Southern Union Company 8 MPSC 3d 287.

III. CONSTRUCTION AND EQUIPMENT

§10. Construction and equipment generally

Where City sought approval by the Commission under Regulation 4 CSR 240-40.030(4)(HH)3, that it was impracticable for the City to construct an emergency replacement section in its natural gas distribution pipeline in such a way as to accommodate instrumented internal inspection devices, approval would be granted where repairs after damage by a contractor to the 15.5 mile long, 8-inch steel transmission pipeline operated

by the City, which was the only feed serving some 4,000 residential, commercial and industrial customers, required installation of a pair of bottom-out line stoppers, each including a 90-degree short radius elbow which does not permit passage of instrumented internal inspection devices, and the relocation to a lower elevation of some 640 feet of the transmission line, approval would be granted. —City of Fulton 8 MPSC 3d 462.

§16. Safety

The Commission denied Staff's motion seeking penalties against a municipality where the municipality completed a gas distribution system replacement project mandated by the Commission but did so five months after a deadline imposed by the Commission.—Public Service Commission Staff v. City of Granby 8 MPSC 3d 515.

IV. OPERATION

§17.1. Purchased Gas Adjustment (PGA)

The Commission approved a stipulation and agreement that resolved all disputes about the reasonableness of the company's storage withdrawals during the 1995/1996 winter season.—Missouri Public Service 8 MPSC 3d 21.

The Commission found that the company's captive firm customers received the appropriate capacity release credits during the ACA period because the company's sales of released capacity to its marketing affiliate were made at market rate.—Missouri Public Service 8 MPSC 3d 21.

The Commission accepted the conclusions of Staff's expert witness and found that the gas utility had previously recovered the cost of gas injected into storage and could not again recover the cost of that gas when it was withdrawn from storage.—Associated Natural Gas 8 MPSC 3d 64.

The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286.—Missouri Gas Energy 8 MPSC 3d 129.

The Commission found the unanimous stipulation and agreement, reached by the parties agreement after the Commission's decision in Case Nos. GR-95-273 and GR-96-192, was reasonable and should be approved. The parties agreed that no Utilicorp Energy Services adjustments be made, that an overrun penalties/scheduling fees adjustment of \$64,044 be made in the 1998/1999 ACA filing, and that no adjustment be made on the calculation of the cash out/imbalance.—Utilicorp United 8 MPSC 3d 162.

§17.2. Purchased Gas-incentive mechanism

After hearing, the Commission granted Laclede's request to extend the experimental Price Stabilization Program (PSP) for an additional three years and to make certain modifications to the program. The Commission also directed that additional modifications shall be made to the PSP, including a change regarding non-winter month transactions, how the TSP (confidential term) will be calculated in specific situations, adjustments to the sharing mechanisms in the overall cost reduction, and a provision giving the Commission the right to review the program annually and revise it to correct any major deficiencies.—Laclede Gas Company 8 MPSC 3d 227.

The Commission rejected a tariff that would have extended a gas company's Experimental Gas Cost Incentive Mechanism for four months while negotiations continued for a possible renewal of the mechanism.—Missouri Gas Energy 8 MPSC 3d 254.

The Commission rejected the company's proposed tariff sheets that were filed to extend and revise the company's Gas Supply Incentive Plan (GSIP II). However, the Commission authorized the company to file tariff sheets to implement a modified GSIP II for a one-year term. The modifications directed by the Commission include changes to provisions regarding gas procurement, off-system sales, capacity release, pipeline discount, and mix of pipeline services.—Laclede Gas Company 8 MPSC 3d 322.

The Commission rejected the company's proposed tariff sheets that were filed to extend and revise the company's Gas Supply Incentive Plan (GSIP II). However, the Commission authorized the company to file tariff sheets to implement a modified GSIP II for a one-year term. The modifications directed by the Commission include changes to provisions regarding gas procurement, off-system sales, capacity release, pipeline discount, and mix of pipeline services.—Laclede Gas Company 8 MPSC 3d 346.

§18. Rates

The Commission approved a stipulation and agreement which provided that the company would withdraw its proposed natural gas tariff sheets and that no change would be made in the rate schedules then in effect for natural gas service, except that the company would be authorized to file tariff sheets to implement a returned check charge. The returned check charge would be a single charge for combined gas and electric customers. The company was also authorized to file additional sheets reflecting miscellaneous changes and corrections, and was directed to utilize the depreciation rates found in Appendix B of the stipulation and agreement.—St. Joseph Light & Power Company 8 MPSC 3d 290.

Where Company sought to renew for an additional year the price stabilization fund and capacity release incentive mechanism, no party objected and the record showed that renewal would protect consumers from possible price increases during the winter heating season, renewal was in the public interest and would be granted by the Commission. —Missouri Gas Energy 8 MPSC 3d 364.

The Commission rejected the tariff sheets filed by Laclede Gas Company which were designed to produce an annual increase of approximately 6.1 percent (\$30.5 million) in charges for gas service.—Laclede Gas Company 8 MPSC 3d 436.

§19. Revenue

The Commission approved a stipulation and agreement which provided that the company would withdraw its proposed natural gas tariff sheets and that no change would be made in the rate schedules then in effect for natural gas service, except that the company would be authorized to file tariff sheets to implement a returned check charge. The returned check charge would be a single charge for combined gas and electric customers. The company was also authorized to file additional sheets reflecting miscellaneous changes and corrections, and was directed to utilize the depreciation rates found in Appendix B of the stipulation and agreement.—St. Joseph Light & Power Company 8 MPSC 3d 290.

The Commission found that Laclede Gas Company's actual customer data for the test year was more complete than the data used in the Staff of the Missouri Public Service Commission's calculations. Therefore, the Commission found that a revenue collection lag of 34.8 days was just and reasonable and should be used to determine the company's revenue requirement.—Laclede Gas Company 8 MPSC 3d 436.

§20. Return

The Commission found it was reasonable to use the discounted cash flow (DCF) analysis in determining the return on equity of Laclede Gas Company. The Commission also determined that a return on equity of 10.5 percent is a just and reasonable return.—Laclede Gas Company 8 MPSC 3d 436.

The Commission found that Laclede Gas Company's most recent projection of its off-system sales revenue was supported by the current trend in decreasing off-system sales revenues and therefore, the Commission imputed \$9 million of off-system sales revenue to the company's revenue requirement.—Laclede Gas Company 8 MPSC 3d 436.

§23. Valuation

The Commission found that revenue received from off-system sales of gas was not, under the terms of the tariffs, required to flow through the Actual Cost Adjustment process.—Laclede Gas Company 8 MPSC 3d 120.

§24. Accounting

The Commission found that Laclede Gas Company's recommendation of a \$29 million short-term debt balance was not reasonable or consistent with the evidence presented that the short-term debt was increasing. The Commission found that a 42-month period was representative of the actual trend toward increased short-term debt experienced by the company.—Laclede Gas Company 8 MPSC 3d 436.

The Commission found a three-year expiration with periodic reporting to the Staff of the Missouri Public Service Commission and the Office of the Public Counsel is a reasonable time limit on an accounting authority order. Therefore, the Commission ordered that the accounting authority order would expire at the end of the three-year period and will only be extended by the filing of a new ratemaking proceeding with the Commission.—Laclede Gas Company 8 MPSC 3d 436.

§27. Depreciation

The Commission found that Laclede Gas Company failed to show that its depreciation calculation, with regard to net salvage was just and reasonable. The Commission determined that Staff's net salvage calculation would allow the company to recover the amounts it is currently spending for net salvage without over-recovering from its ratepayers is a just and reasonable result.—Laclede Gas Company 8 MPSC 3d 436.

§29. Costs and expenses

The Commission found that a proposed cap on advertising expenses was not supported by competent and substantial evidence and that in order to fulfill its duty of determining if the company's expenses on advertising were prudent, the Commission must do a review of the advertising expenses. The Commission reaffirmed that it will continue to follow the standards as set out in *Re: Kansas City Power and Light Company*, 28 Mo. P.S.C. (N.S.) 228 (1986).—Laclede Gas Company 8 MPSC 3d 436.

The Commission found that Laclede Gas Company had not committed to removing its natural gas holders, that the company had already recovered its capital investment in the natural gas holders, and that there was no interim net salvage value of the natural gas holders. Therefore, the Commission determined that it was not just and reasonable for current customers of the company to pay for the expense of removal when the ratepayers may receive no benefit from those payments.—Laclede Gas Company 8 MPSC 3d 436.

§33. Billing practices

The Commission authorized the company to file tariff sheets to implement a returned check charge. The returned check charge would be a single charge for combined gas and electric customers.—*St. Joseph Light & Power Company* 8 MPSC 3d 290.

MANUFACTURED HOUSING

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the manufacturers and dealers**
- §3. Jurisdiction and powers of Federal authorities**
- §4. Jurisdiction and powers of the State Commission**
- §5. Reports, records and statements**

II. WHEN A PERMIT IS REQUIRED

- §6. When a permit is required generally**
- §7. Operations and construction**

III. GRANT OR REFUSAL OF A PERMIT

- §8. Grant or refusal generally**
- §9. Restrictions or conditions**
- §10. Who may possess**
- §11. Public safety**

IV. OPERATION, TRANSFER, REVOCATION OR CANCELLATION

- §12. Operations under the permit generally**
- §13. Duration of the permit**
- §14. Modification and amendment of the permit generally**
- §15. Transfer, mortgage or lease generally**
- §16. Revocation, cancellation and forfeiture generally**
- §17. Acts or omissions justifying revocation or forfeiture**
- §18. Necessity of action by the Commission**
- §19. Penalties**

MANUFACTURED HOUSING**I. IN GENERAL****§2. Obligation of the manufacturers and dealers**

The Commission approved the agreement which stated that: (1) Factory had received the inspection reports of the Director for the home referred to in the complaint; (2) the complaint concerned a manufactured home purchased from Factory by Fergusons; (3) the Director had found various deficiencies in the setup of the Fergusons' home; (4) Factory had responded to and had made attempts to satisfy the items set forth in the complaint; (5) Fergusons had refused to allow Factory to make any further repairs to the home; (6) Factory's dealer registrations would be placed on probation for 90 days, beginning on the date the Commission approves the Agreement; (7) during the probationary period, if Factory violated any of the rules, regulations, or laws pertaining to the sale or setup of manufactured homes, the Director would have the option to file a formal complaint for violation of the order approving the Agreement; (8) such complaint would be in addition to a complaint filed against Factory for the alleged offense which caused the probation violation.—PSC Staff vs Lake Area Development Company 8 MPSC 3d 256.

II. OPERATION, TRANSFER, REVOCATION OR CANCELLATION**§16. Revocation, cancellation and forfeiture generally**

The Commission issued an order of default and suspended a manufactured housing dealer's certificate of dealer registration when the dealer failed to respond to Commission's Notice of Complaint regarding a complaint against the dealer.—PSC Staff vs Pitts Mobile Homes 8 MPSC 3d 425.

§19. Penalties

The Commission approved the agreement which stated that: (1) Factory had received the inspection reports of the Director for the home referred to in the complaint; (2) the complaint concerned a manufactured home purchased from Factory by Fergusons; (3) the Director

had found various deficiencies in the setup of the Fergusons' home; (4) Factory had responded to and had made attempts to satisfy the items set forth in the complaint; (5) Fergusons had refused to allow Factory to make any further repairs to the home; (6) Factory's dealer registrations would be placed on probation for 90 days, beginning on the date the Commission approves the Agreement; (7) during the probationary period, if Factory violated any of the rules, regulations, or laws pertaining to the sale or setup of manufactured homes, the Director would have the option to file a formal complaint for violation of the order approving the Agreement; (8) such complaint would be in addition to a complaint filed against Factory for the alleged offense which caused the probation violation.—PSC Staff vs Lake Area Development Company 8 MPSC 3d 256.

The Commission issued an order of default and suspended a manufactured housing dealer's certificate of dealer registration when the dealer failed to respond to Commission's Notice of Complaint regarding a complaint against the dealer.—PSC Staff vs Pitts Mobile Homes 8 MPSC 3d 425.

PUBLIC UTILITIES

I. IN GENERAL

- §1. Generally
- §2. Nature of
- §3. Functions and powers
- §4. Termination of status
- §5. Obligation of the utility

II. JURISDICTION AND POWERS

- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of the Federal Commissions
- §9. Jurisdiction and powers of local authorities

III. FACTORS AFFECTING PUBLIC UTILITY CHARACTER

- §10. Tests in general
- §11. Franchises
- §12. Charters
- §13. Acquisition of public utility property
- §14. Compensation or profit
- §15. Eminent domain
- §16. Property sold or leased to a public utility
- §17. Restrictions on service, extent of use
- §18. Size of business
- §19. Solicitation of business
- §20. Submission to regulation
- §21. Sale of surplus
- §22. Use of streets or public places

IV. PARTICULAR ORGANIZATIONS-PUBLIC UTILITY CHARACTER

- §23. Particular organizations generally
- §24. Municipal plants

- §25. **Municipal districts**
- §26. **Mutual companies; cooperatives**
- §27. **Corporations**
- §28. **Foreign corporations or companies**
- §29. **Unincorporated companies**
- §30. **State or federally owned or operated utility**
- §31. **Trustees**

PUBLIC UTILITIES

I. IN GENERAL

§5. **Obligation of the utility**

Where a number of utilities sought rehearing and a stay after the Commission made its public utility assessments against public utilities provided for by section 386.370 for the Commission's fiscal year commencing July 1, 1998, because certain amounts had been transferred out of the Public Service Commission Fund and used to fund refunds to taxpayers under the so-called Hancock Amendment, the Commission was without authority to determine whether the transfers in question were lawful, but would recalculate certain assessments and would credit each utility with its proportionate share of the amount transferred as though that amount remained in the fund as an offset against future assessments.—Assessment Public Utilities 8 MPSC 3d 43.

Staff's motion to revise public utility assessments for Fiscal Year 1999 would be granted.—Assessment public utilities 8 MPSC 3d 112.

II. JURISDICTION AND POWERS

§6. **Jurisdiction and powers generally**

When an attorney represents a party to a case, he may not appear as a witness in that case.—Osage Water Company vs Ozark Shores Water Company 8 MPSC 3d 80.

§11. **Franchises**

The Commission found that it has no jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated utility companies.—American Water Works 8 MPSC 3d 96.

§13. **Acquisition of public utility property**

Upon completion of the sale transaction and transfer of assets approved by the Commission, the certificate and tariffs held by the regulated water and sewer company were cancelled, as requested.—Schell Sanitation 8 MPSC 3d 18.

RATES

I. JURISDICTION AND POWERS

- §1. **Jurisdiction and powers generally**
- §2. **Jurisdiction and powers of Federal Commissions**
- §3. **Jurisdiction and powers of the State Commission**
- §4. **Jurisdiction and powers of the courts**

- §5. Jurisdiction and powers of local authorities
- §6. Limitations on jurisdiction and power
- §7. Obligation of the utility

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

- §8. Reasonableness generally
- §9. Right of utility to accept less than a reasonable rate
- §10. Ability to pay
- §11. Breach of contract
- §12. Capitalization and security prices
- §13. Character of the service
- §14. Temporary or emergency
- §15. Classification of customers
- §16. Comparisons
- §17. Competition
- §18. Consolidation or sale
- §19. Contract or franchise rate
- §20. Costs and expenses
- §21. Discrimination, partiality, or unfairness
- §22. Economic conditions
- §23. Efficiency of operation and management
- §24. Exemptions
- §25. Former rates; extent of change
- §26. Future prospects
- §27. Intercorporate relations
- §28. Large consumption
- §29. Liability of utility
- §30. Location
- §31. Maintenance of service
- §32. Ownership of facilities
- §33. Losses or profits
- §34. Effects on patronage and use of the service
- §35. Patron's profit from use of service
- §36. Public or industrial use
- §37. Refund and/or reduction
- §38. Reliance on rates by patrons
- §39. Restriction of service
- §40. Revenues
- §41. Return
- §42. Seasonal or irregular use
- §43. Substitute service
- §44. Taxes
- §45. Uniformity
- §46. Value of service
- §47. Value of cost of the property
- §48. Violation of law or orders
- §49. Voluntary rates
- §50. What the traffic will bear
- §51. Wishes of the utility or patrons

III. CONTRACTS AND FRANCHISES

- §52. Contracts and franchises generally
- §53. Validity of rate contract

- §54. Filing and Commission approval
- §55. Changing or terminating-contract rates
- §56. Franchise or public contract rates
- §57. Rates after expiration of franchise
- §58. Effect of filing new rates
- §59. Changes by action of the Commission
- §60. Changes or termination of franchise or public contract rate
- §61. Restoration after change

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO

- §62. Initiation of rates and rate changes
- §63. Proper rates when existing rates are declared illegal
- §64. Reduction of rates
- §65. Refunds
- §66. Filing of schedules reports and records
- §67. Publication and notice
- §68. Establishment of rate base
- §69. Approval or rejection by the Commission
- §70. Legality pending Commission action
- §71. Suspension
- §72. Effective date
- §73. Period for which effective
- §74. Retroactive rates
- §75. Deviation from schedules
- §76. Form and contents
- §77. Billing methods and practices
- §78. Optional rate schedules
- §79. Test or trial rates

V. KINDS AND FORMS OF RATES AND CHARGES

- §80. Kinds and forms of rates and charges in general
- §81. Surcharges
- §82. Uniformity of structure
- §83. Cost elements involved
- §84. Load, diversity and other factors
- §85. Flat rates and charges
- §86. Mileage charges
- §87. Zone rates
- §88. Transition from flat to meter
- §89. Straight, block or step-generally
- §90. Contract or franchise requirement
- §91. Two-part rate combinations
- §92. Charter, contract, statutory, or franchise restrictions
- §93. Demand charge
- §94. Initial charge
- §95. Meter rental
- §96. Minimum bill or charge
- §97. Maximum charge or rate
- §98. Wholesale rates
- §99. Charge when service not used; discontinuance
- §100. Variable rates based on costs-generally
- §101. Fuel clauses
- §102. Installation, connection and disconnection charges
- §103. Charges to short time users

VI. RATES AND CHARGES OF PARTICULAR UTILITIES

- §104. Electric and power
- §105. Demand, load and related factors
- §106. Special charges; amount and computation
- §107. Kinds and classes of service
- §108. Gas
- §109. Heating
- §110. Telecommunications
- §111. Water
- §112. Sewers
- §113. Joint Municipal Utility Commissions

VII. EMERGENCY AND TEMPORARY RATES

- §114. Emergency and temporary rates generally
- §115. What constitutes an emergency
- §116. Prices
- §117. Burden of proof to show emergencies

VIII. RATE DESIGN, CLASS COST OF SERVICE

- §118. Method of allocating costs
- §119. Rate design, class cost of service for electric utilities
- §120. Rate design, class cost of service for gas utilities
- §121. Rate design, class cost of service for water utilities
- §122. Rate design, class cost of service for sewer utilities
- §123. Rate design, class cost of service for telecommunications utilities
- §124. Rate design, class cost of service for heating utilities

RATES

I. JURISDICTION AND POWERS**§3. Jurisdiction and powers of the State Commission**

In the Report and Order, the Commission deferred its decision on the rate design of the Company until its next general rate case and ordered the Company to maintain the data necessary to perform district-specific cost of service studies in its next general rate case.—Missouri-American Water Company 8 MPSC 3d 394.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

§8. Reasonableness generally

The Commission approved the unanimous stipulation and agreement, finding the proposed rate increase and the rate design fair and reasonable. The stipulation and agreement approved proposed plan to implement a rate increase in two phases, approving a \$484,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective January 1, 2000, during the first phase and a \$267,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective December 1, 2000, during the second phase.—United Water Missouri 8 MPSC 3d 303.

§13. Character of the service

The Commission found that the service was not a toll service where it contained a flat rate and a per minute-of-use rate for the service.—GTE Midwest, Inc. 8 MPSC 3d 26.

Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.—GTE Midwest, Inc. 8 MPSC 3d 26.

§18. Consolidation or sale

The sale and transfer of assets of a private public utility providing water and sewer services outside of a municipality to that municipality would not be detrimental to the public interest and is approved because the public utility is operating at capacity and continuation of operations would require significant capital improvement and a higher rate increase than customers will experience under the municipality's rate structure.—Schell Sanitation 8 MPSC 3d 18.

The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations on effluent produced by West Elm's sewer system.—West Elm Place Corporation 8 MPSC 3d 137.

§20. Costs and expenses

The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations on effluent produced by West Elm's sewer system.—West Elm Place Corporation 8 MPSC 3d 137.

§32. Ownership of facilities

The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and

unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations on effluent produced by West Elm's sewer system.—West Elm Place Corporation 8 MPSC 3d 137.

§37. Refund and/or reduction

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286. —Missouri Gas Energy 8 MPSC 3d 129.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission.—Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.—Union Electric Company 8 MPSC 3d 465.

§40. Revenues

The Commission found that Laclede Gas Company's most recent projection of its off-system sales revenue was supported by the current trend in decreasing off-system sales

revenues and therefore, the Commission imputed \$.9 million of off-system sales revenue to the company's revenue requirement.—Laclede Gas Company 8 MPSC 3d 436.

§44. Taxes

The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286.—Missouri Gas Energy 8 MPSC 3d 129.

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO

§64. Reduction of rates

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

§65. Refunds

The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286.—Missouri Gas Energy 8 MPSC 3d 129.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission. —Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case. — Union Electric Company 8 MPSC 3d 465.

V. KINDS AND FORMS OF RATES AND CHARGES

§85. Flat rates and charges

Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.—GTE Midwest Inc. 8 MPSC 3d 26.

§91. Two-part rate combination

The Commission found that the service was not a toll service where it contained a flat rate and a per minute-of-use rate for the service.—GTE Midwest, Inc. 8 MPSC 3d 26.

Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.—GTE Midwest, Inc. 8 MPSC 3d 26.

VI. RATES AND CHARGES OF PARTICULAR UTILITIES

§104. Electric and power

The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.—Kansas City Power & Light 8 MPSC 3d 113.

The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).—Union Electric Company 8 MPSC 3d 465.

The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.—Union Electric Company 8 MPSC 3d 465.

Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission. —Union Electric Company 8 MPSC 3d 465.

Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.—Union Electric Company 8 MPSC 3d 465.

§108. Gas

The Commission found that Laclede Gas Company's most recent projection of its off-system sales revenue was supported by the current trend in decreasing off-system sales revenues and therefore, the Commission imputed \$.9 million of off-system sales revenue to the company's revenue requirement.—Laclede Gas Company 8 MPSC 3d 436.

§111. Water

The Commission approved the unanimous stipulation and agreement, finding the proposed rate increase and the rate design fair and reasonable. The stipulation and agreement approved proposed plan to implement a rate increase in two phases, approving a \$484,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective January 1, 2000, during the first phase and a \$267,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective December 1, 2000, during the second phase.—United Water Missouri 8 MPSC 3d 303.

In the Report and Order, the Commission deferred its decision on the rate design of the Company until its next general rate case and ordered the Company to maintain the data necessary to perform district-specific cost of service studies in its next general rate case.—Missouri-American Water Company 8 MPSC 3d 394.

VIII. RATE DESIGN, CLASS COST OF SERVICE

§119. Rate design, class cost of service for electric utilities

The Commission approved a nonunanimous stipulation and agreement submitted by the parties which resolves all uncontested issues, not including the issue involving residential seasonal differentials and Rider E supplementary services, when no party requested a hearing on those uncontested issues.—Union Electric Company 8 MPSC 3d 407.

Because Intervenor Laclede is requesting a change in the rate design previously found just and reasonable by the Commission, Laclede bears the burden of proof that the present residential seasonal differential is not just and reasonable, and that the proposed rates or rate design is just and reasonable.—Union Electric Company 8 MPSC 3d 407.

The Commission denied Intervenor Laclede's request to open a new case to investigate Union Electric's Rider E supplementary service tariff because Laclede made no specific allegation of harm or proposal to change it tariff addressing Rider E Supplementary service and that same issue had recently been addressed in a complaint filed previously by Trigen-St. Louis.—Union Electric Company 8 MPSC 3d 407.

§121. Rate design, class cost of service for water utilities

The Commission approved the unanimous stipulation and agreement, finding the proposed rate increase and the rate design fair and reasonable. The stipulation and agreement approved proposed plan to implement a rate increase in two phases, approving a \$484,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective January 1, 2000, during the first phase and a \$267,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective December 1, 2000, during the second phase.—United Water Missouri 8 MPSC 3d 303.

In the Report and Order, the Commission deferred its decision on the rate design of the Company until its next general rate case and ordered the Company to maintain the data

necessary to perform district-specific cost of service studies in its next general rate case.—
Missouri-American Water Company 8 MPSC 3d 394.

SECURITY ISSUES

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Authorization by a corporation
- §4. Conversion, redemption and purchase by a corporation
- §5. Decrease of capitalization
- §6. Sinking funds
- §7. Dividends
- §8. Revocation and suspension of Commission authorization
- §9. Fees and expenses
- §10. Purchase by utility
- §11. Accounting practices

II. JURISDICTION AND POWERS

- §12. Jurisdiction and powers in general
- §13. Jurisdiction and powers of Federal Commissions
- §14. Jurisdiction and powers of the State Commission
- §15. Jurisdiction and powers of local authorities

III. NECESSITY OF AUTHORIZATION BY THE COMMISSION

- §16. Necessity of authorization by the Commission generally
- §17. Installment contracts
- §18. Refunding or exchange of securities
- §19. Securities covering utility and nonutility property
- §20. Securities covering properties outside the State

IV. FACTORS AFFECTING AUTHORIZATION

- §21. Factors affecting authorization generally
- §21.1. Effect on bond rating
- §22. Equity capital
- §23. Charters
- §24. Competition
- §25. Compliance with the terms of a mortgage or lease
- §26. Definite plans and purposes
- §27. Financial conditions and prospects
- §28. Use of proceeds
- §29. Dividends and dividend restrictions
- §30. Improper practices and irregularities
- §31. Intercorporate relations
- §32. Necessity of issuance
- §33. Revenue
- §34. Rates and rate base
- §35. Size of the company
- §36. Title of property

- §37. Amount
- §38. Kind of security
- §39. Restrictions imposed by the security

V. PURPOSES AND SUBJECTS OF CAPITALIZATION

- §40. Purposes and subjects of capitalization generally
- §41. Additions and betterments
- §42. Appreciation or full plant value
- §43. Compensation for services and stockholders' contributions
- §44. Deficits and losses
- §45. Depreciation funds and requirements
- §46. Financing costs
- §47. Intangible property
- §48. Going value and good will
- §49. Stock dividends
- §50. Loans to affiliated interests
- §51. Overhead
- §52. Profits
- §53. Refunding, exchange and conversion
- §54. Reimbursement of treasury
- §55. Renewals, replacements and reconstruction
- §56. Working capital

VI. KINDS AND PROPORTIONS

- §57. Bonds or stock
- §58. Common or preferred stock
- §59. Stock without par value
- §60. Short term notes
- §61. Proportions of stock, bonds and other security
- §62. Proportion of debt to net plant

VII. SALE PRICE AND INTEREST RATES

- §63. Sale price and interest rates generally
- §64. Bonds
- §65. Notes
- §66. Stock
- §67. Preferred stock
- §68. No par value stock

VIII. FINANCING METHODS AND PRACTICES

- §69. Financing methods and practices generally
- §70. Leases
- §71. Financing expense
- §72. Payment for securities
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IX. PARTICULAR UTILITIES

- §76. Telecommunications
- §77. Electric and power
- §78. Gas
- §79. Sewer

- §80. Water
- §81. Miscellaneous

SECURITY ISSUES

II. JURISDICTION AND POWERS

§12. Jurisdiction and powers in general

The Commission approved an application for a public utility to submit its bid to acquire stock of a Brazilian public utility through a subsidiary.—UtiliCorp United 8 MPSC 3d 528.

IV. FACTORS AFFECTING AUTHORIZATION

§21. Factors affecting authorization generally

The Commission's approval of an application for a public utility to submit its bid to acquire stock of a Brazilian public utility through a subsidiary was conditioned on allocating any adverse financial effects to shareholders.—UtiliCorp United 8 MPSC 3d 528.

VIII. FINANCING METHODS AND PRACTICES

§69. Financing methods and practices generally

The Commission approved a stock purchase agreement for all the stock of public utility company by a holding company and a pledge of the stock and property of the public utility to secure financing obtained by the holding company for the stock purchase agreement.—Mid-Missouri Telephone 8 MPSC 3d 400.

SERVICE

I. IN GENERAL

- §1. Generally
- §2. What constitutes adequate service
- §3. Obligation of the utility
- §4. Abandonment, discontinuance and refusal of service
- §5. Contract, charter, franchise and ordinance provisions
- §6. Restoration or continuation of service
- §7. Substitution of service
- §7.1. Change of supplier
- §8. Discrimination

II. JURISDICTION AND POWERS

- §9. Jurisdiction and powers generally
- §10. Jurisdiction and powers of the Federal Commissions
- §11. Jurisdiction and powers of the State Commission
- §12. Jurisdiction and powers over service outside of the state
- §13. Jurisdiction and powers of the courts
- §14. Jurisdiction and powers of local authorities
- §15. Limitations on jurisdiction
- §16. Enforcement of duty to serve

III. DUTY TO SERVE

- §17. Duty to serve in general
- §18. Duty to render adequate service
- §19. Extent of profession of service
- §20. Duty to serve as affected by contract
- §21. Duty to serve as affected by charter, franchise or ordinance
- §22. Duty to serve persons who are not patrons
- §23. Reasons for failure or refusal to serve
- §24. Duty to serve as affected by inadequate revenue

IV. OPERATIONS

- §25. Operations generally
- §26. Extensions
- §27. Trial or experimental operation
- §28. Consent of local authorities
- §29. Service area
- §30. Rate of return
- §31. Rules and regulations
- §32. Use and ownership of property
- §33. Hours of service
- §34. Restriction on service
- §35. Management and operation
- §36. Maintenance
- §37. Equipment
- §38. Standard service
- §39. Noncontinuous service

V. SERVICE BY PARTICULAR UTILITIES

- §40. Gas
- §41. Electric and power
- §42. Heating
- §43. Water
- §44. Sewer
- §45. Telecommunications

VI. CONNECTIONS, INSTRUMENTS AND EQUIPMENT

- §46. Connections, instruments and equipment in general
- §47. Duty to install, own and maintain
- §48. Protection, location and liability for damage
- §49. Restriction and control of connections, instruments and equipment

SERVICE

No cases in this volume involved the question of service.

SEWER

I. IN GENERAL

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the Federal Commissions
- §7. Jurisdiction and powers of the State Commission
- §8. Jurisdiction and powers of local authorities
- §9. Territorial agreements

III. OPERATIONS

- §10. Operation generally
- §11. Construction and equipment
- §12. Maintenance
- §13. Additions and betterments
- §14. Rates and revenues
- §15. Return
- §16. Costs and expenses
- §17. Service
- §18. Depreciation
- §19. Discrimination
- §20. Apportionment
- §21. Accounting
- §22. Valuation
- §23. Extensions
- §24. Abandonment or discontinuance
- §25. Reports, records and statements
- §26. Financing practices
- §27. Security issues
- §28. Rules and regulations
- §29. Billing practices
- §30. Eminent domain
- §31. Accounting Authority orders

SEWER

I. IN GENERAL

§1. Generally

The sale and transfer of assets of a private public utility providing water and sewer services outside of a municipality to that municipality would not be detrimental to the public interest and is approved because the public utility is operating at capacity and continuation of operations would require significant capital improvement and a higher rate increase than customers will experience under the municipality's rate structure.—Schell Sanitation 8 MPSC 3d 18.

§2. What constitutes adequate service

Upon completion of the sale transaction and transfer of assets approved by the Commission, the certificate and tariffs held by the regulated water and sewer company were cancelled, as requested.—Schell Sanitation 8 MPSC 3d 18.

The Commission found that the application filed by Timber Creek for a certificate of public convenience and necessity authorizing Timber Creek to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Platte County, Missouri, should be granted.—Timber Creek Sewer Company 8 MPSC 3d 312.

The Commission found that the application filed by Osage Water for a certificate of public convenience and necessity authorizing Osage Water to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Camden County, Missouri, should be granted.—Osage Water Company 8 MPSC 3d 366.

§4. Abandonment, discontinuance and refusal of service

The sale and transfer of assets of a private public utility providing water and sewer services outside of a municipality to that municipality would not be detrimental to the public interest and is approved because the public utility is operating at capacity and continuation of operations would require significant capital improvement and a higher rate increase than customers will experience under the municipality's rate structure.—Schell Sanitation 8 MPSC 3d 18.

The Commission authorized a sewer utility to sell substantially all of its assets to a public sewer district.—Imperial Utility Corporation 8 MPSC 3d 134.

The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations on effluent produced by West Elm's sewer system.—West Elm Place Corporation 8 MPSC 3d 137.

STEAM

I. IN GENERAL

- §1. Generally**
- §2. Obligation of the utility**
- §3. Certificate of convenience and necessity**
- §4. Transfer, lease and sale**
- §4.1. Change of suppliers**
- §5. Charters and franchise**
- §6. Territorial agreements**

II. JURISDICTION AND POWERS

- §7. Jurisdiction and powers generally**
- §8. Jurisdiction and powers of Federal Commissions**
- §9. Jurisdiction and powers of the State Commission**
- §10. Jurisdiction and powers of the local authorities**
- §11. Territorial agreements**
- §12. Unregulated service agreements**

III. OPERATIONS

- §13. Operations generally
- §14. Rules and regulations
- §15. Cooperatives
- §16. Public corporations
- §17. Abandonment and discontinuance
- §18. Depreciation
- §19. Discrimination
- §20. Rates
- §21. Refunds
- §22. Revenue
- §23. Return
- §24. Services generally
- §25. Competition
- §26. Valuation
- §27. Accounting
- §28. Apportionment
- §29. Rate of return
- §30. Construction
- §31. Equipment
- §32. Safety
- §33. Maintenance
- §34. Additions and betterments
- §35. Extensions
- §36. Local service
- §37. Liability for damage
- §38. Financing practices
- §39. Costs and expenses
- §40. Reports, records and statements
- §41. Billing practices
- §42. Planning and management
- §43. Accounting Authority orders
- §44. Safety
- §45. Decommissioning costs

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §46. Relations between connecting companies generally
- §47. Physical connection
- §48. Contracts
- §49. Records and statements

STEAM
III. OPERATIONS**§20. Rates**

The Commission ordered that SJLP should file rate schedules designed to reduce the gross annual industrial steam service revenues of SJLP by a total of \$25,000 effective for service rendered on and after October 31, 1999.—St. Joseph Light & Power Company 8 MPSC 3d 293.

TELECOMMUNICATIONS

I. IN GENERAL

- §1. Generally
- §2. Obligation of the utility
- §3. Certificate of convenience and necessity
- §3.1. Certificate of local exchange service authority
- §3.2. Certificate of interexchange service authority
- §3.3. Certificate of basic local exchange service authority
- §4. Transfer, lease and sale

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers of local authorities
- §6. Jurisdiction and powers of Federal Commissions
- §7. Jurisdiction and powers of the State Commission

III. OPERATIONS

- §8. Operations generally
- §9. Public corporations
- §10. Abandonment or discontinuance
- §11. Depreciation
- §12. Discrimination
- §13. Costs and expenses
- §13.1. Yellow Pages
- §14. Rates
- §15. Establishment of a rate base
- §16. Revenue
- §17. Valuation
- §18. Accounting
- §19. Financing practices
- §20. Return
- §21. Construction
- §22. Maintenance
- §23. Rules and regulations
- §24. Equipment
- §25. Additions and betterments
- §26. Service generally
- §27. Invasion of adjacent service area
- §28. Extensions
- §29. Local service
- §30. Calling scope
- §31. Long distance service
- §32. Reports, records and statements
- §33. Billing practices
- §34. Pricing policies
- §35. Accounting Authority orders

IV. RELATIONS BETWEEN CONNECTING COMPANIES

- §36. Relations between connecting companies generally
- §37. Physical connection
- §38. Contracts
- §39. Division of revenue, expenses, etc.

V. ALTERNATIVE REGULATION AND COMPETITION

- §40. Classification of company or service as noncompetitive, transitionally , or competitive
- §41. Incentive regulation plans
- §42. Rate bands
- §43. Waiver of statutes and rules
- §44. Network modernization
- §45. Local exchange competition
- §46. Interconnection Agreements
- §46.1. Interconnection Agreements-Arbitrated

TELECOMMUNICATIONS

I. IN GENERAL

§1. Generally

The Commission denied SWBT's application for rehearing because the Commission anticipates that the area codes involved in the split will not exhaust until after the middle of the next decade and, is, therefore, in compliance with the Industry Numbering Committee's guidelines.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

Public Counsel's motion to compel was denied because the Commission denied SWBT's application for rehearing, and when the North American Numbering Council recommended that the Federal Communications Commission, Common Carriers Bureau, direct the North American Numbering Plan Administrator to issue a new area code, the underlying issue became moot.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission approved the proposed area code relief implementation plan and directed the Technical Committee to take all actions as proposed by the implementation plan, submitting dates for permissive and mandatory dialing and an education plan to the Commission for review.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission approved dates for the completion of permissive dialing, mandatory dialing and intercept recording dates as proposed by the Technical Committee for the implementation of the 314/636 area code split.—Area codes, 636 area code 8 MPSC 3d 82.

Pursuant to 4 CSR 240-2.116(2), a case may be dismissed for failure to prosecute if no action has taken place for 90 days and no party has requested a continuance.—GTE Corporation 8 MPSC 3d 101.

The Public Service Commission followed the guidance of the Federal Communications Commission when the FCC declared that the state commissions were already delegated the authority to deal with consolidating rate centers or areas, even for the purpose of number conservation efforts, as part of the rate setting authority. See, In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 and the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224. (Released September 28, 1998). The Commission approved Rate Center Consolidation Report option 1 as reasonable and directed Southwestern Bell Telephone Company to implement Rate Center Consolidation Report option 1 no later than December 31, 1999.—Investigation number conservation 8 MPSC 3d 349.

The Commission adopted the industry recommendation that the Commission eliminate protected codes in the 816 area codes for those telephone exchange numbers also issued in the 913 area code, as a conservation method for telephone exchanges in the Kansas City metro calling area.—Elimination of protected codes 8 MPSC 3d 143.

The Commission directed Staff of the Commission to seek additional authority from the FCC to implement telephone number conservation methods, including but not limited to one thousand block number pooling and sequential number assignments.—Investigation number conservation 8 MPSC 3d 349.

The Commission found that the review of the technical and financial provisioning of calling scopes in a competitive market could be concluded because of the changes in the telecommunications industry including the elimination of Community Optional Service, the implementation of intraLATA presubscription, the entry into the competitive local exchange market by several companies, and the establishment of a contested case to examine the Metropolitan Calling Area service (Case No. TO-99-483).—Calling scopes 8 MPSC 3d 399.

The Commission agrees with SWBT that all six types of traffic at issue, i.e. interMTA traffic, transiting traffic, traffic that neither originates nor terminates on cellular network, non-local traffic associated with optional calling plans, paging traffic, and ISP traffic, should be explicitly excluded from local reciprocal compensation in the parties' Agreement for Type 2B connections.—Mid-Missouri Cellular 8 MPSC 3d 102.

§3. Certificate of convenience and necessity

Steelville Telephone Exchange, Inc. is authorized to borrow an amount not to exceed \$9,866,100 from the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB), and to execute various promissory notes and security agreements in association with the proposed loan and to use the amount borrowed to improve and modernize its facilities and to discharge or retire existing indebtedness.—Steelville Telephone Exchange 8 MPSC 3d 167.

§3.2. Certificate of interexchange service authority

The Commission granted an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Alma Long-Distance 8 MPSC 3d 357.

The Commission granted an affiliate of an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Northeast Missouri Long Distance 8 MPSC 3d 360.

The Commission granted an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Alma Long Distance 8 MPSC 3d 383.

The Commission granted an affiliate of an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Northeast Missouri Long Distance 8 MPSC 3d 385.

The Commission granted an affiliate of an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.—Northeast Missouri Long Distance 8 MPSC 3d 385.

§4. Transfer, lease and sale

The Commission denied SWBT's application for rehearing because the Commission anticipates that the area codes involved in the split will not exhaust until after the middle of the next decade and, is, therefore, in compliance with the Industry Numbering Committee's guidelines.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission approved a telephone company's application for authority to transfer certain assets to a wholly owned subsidiary.—Southwestern Bell Telephone Company 8 MPSC 3d 406.

II. JURISDICTION AND POWERS

§5. Jurisdiction and powers of local authorities

The Commission has authority to review all tariffs filed with the Commission and to reject or suspend tariffs that fail to comply with state law, Commission rule or order, if they include unjust or unreasonable rates, or are not in the public interest.—GTE Midwest, Inc. 8 MPSC 3d 26.

§7. Jurisdiction and powers of the State Commissions

47 U.S.C. § 151 et seq. establishes jurisdiction in the Commission to arbitrate disputes between interconnecting local exchange carriers.—AT&T, Southwestern Bell Telephone Company 8 MPSC 3d 50.

III. OPERATIONS

§8. Operations generally

Public Counsel's motion to compel was denied because the Commission denied SWBT's application for rehearing, and when the North American Numbering Council recommended that the Federal Communications Commission, Common Carriers Bureau, direct the North American Numbering Plan Administrator to issue a new area code, the underlying issue became moot.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission approved the proposed area code relief implementation plan and directed the Technical Committee to take all actions as proposed by the implementation plan, submitting dates for permissive and mandatory dialing and an education plan to the Commission for review.—Investigation of exhaustion of central office codes 8 MPSC 3d 55.

The Commission approved dates for the completion of permissive dialing, mandatory dialing and intercept recording dates as proposed by the Technical Committee for the implementation of the 314/636 area code split.—Area codes, 636 area code 8 MPSC 3d 82.

The Commission adopted the industry recommendation that the Commission eliminate protected codes in the 816 area codes for those telephone exchange numbers also issued in the 913 area code, as a conservation method for telephone exchanges in the Kansas City metro calling area.—Elimination of protected codes 8 MPSC 3d 143.

The Public Service Commission followed the guidance of the Federal Communications Commission when the FCC declared that the state commissions were already delegated the authority to deal with consolidating rate centers or areas, even for the purpose of number

conservation efforts, as part of the rate setting authority. See, In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 and the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224. (Released September 28, 1998). The Commission approved Rate Center Consolidation Report option 1 as reasonable and directed Southwestern Bell Telephone Company to implement Rate Center Consolidation Report option 1 no later than December 31, 1999.—Investigation number conservation 8 MPSC 3d 349.

The Commission directed Staff of the Commission to seek additional authority from the FCC to implement telephone number conservation methods, including but not limited to one thousand block number pooling and sequential number assignments.—Investigation number conservation 8 MPSC 3d 349.

§11. Depreciation

The Commission approved a stipulation and agreement whereby Miller Telephone Company agreed to reduce its earnings on an annual basis by approximately \$90,708. As part of the stipulation and agreement, the Commission authorized the company to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small companies.—PSC Staff vs Miller Telephone Company 8 MPSC 3d 145.

After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$250,504.75. As part of that agreement, the company was authorized to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies.—Mid-Missouri Telephone Company 8 MPSC 3d 152.

§14. Rates

After hearing, the Commission approved a nonunanimous stipulation and agreement that established access rate parity between interLATA and intraLATA calls, eliminated the Carrier Common Line (CCL) Cap, and established a CCL terminating to originating ratio consistent with the ratio of other local exchange companies in Missouri.—Seneca Telephone Company/Goodman Telephone Company 8 MPSC 3d 83.

The Commission approved a revised stipulation and agreement regarding the earnings of a telephone company.—McDonald County Telephone Company 8 MPSC 3d 110.

The Commission found that the current Relay Missouri Surcharge amount and retention rates were just and reasonable and should not be adjusted at this time.—Relay Missouri 8 MPSC 3d 133.

The Commission approved a stipulation and agreement whereby Miller Telephone Company agreed to reduce its earnings on an annual basis by approximately \$90,708. The stipulation and agreement eliminated the company's Touchtone additive and authorized the company to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small companies. The Commission rejected an intervenor's proposal to bring interLATA and intraLATA access rates to parity.—PSC Staff vs Miller Telephone Company 8 MPSC 3d 145.

After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$254,504.75. The agreement reduced interLATA access rates and removed the intraLATA Carrier Common Line cap. Included in the agreement is the elimination of the company's Touchtone additive and the authorization of new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies. The Commission also allowed the company to retire existing plant, resulting in an extraordinary amortization of approximately \$1,250,000, to be amortized at a rate of \$250,000 for five years.—Mid-Missouri Telephone Company 8 MPSC 3d 152.

The Commission approved a stipulation and agreement that established rates for a telephone company.—Rock Port Telephone Company 8 MPSC 3d 171.

Where, in order to qualify for price cap regulation a company must show (1) that a competitive local exchange company (CLEC) is properly certificated to provide service in the Applicant's service area, and (2) that the CLEC is, in fact, providing service in any part of the Applicant's service area, Sprint made the requisite showing and so was entitled to price-cap regulation status.—Sprint Missouri, Inc. 8 MPSC 3d 297.

The Commission has previously held that the statute authorizing price-cap regulation does not require notice to the public nor does it require a hearing, therefore, Public Counsel's request for a hearing will be denied.—Sprint Missouri, Inc. 8 MPSC 3d 297.

The Commission did not approve the request by local telephone companies to amend their tariffs to allow them to apply their switched access rates to traffic originating on a commercial mobile radio service that terminates in their territory.—Alma Telephone Company 8 MPSC 3d 520.

The Commission approved Southwestern Bell Telephone Company's tariff sheets, which offered an interim one-way Message Telecommunications Service to replace Community Optional Service in the petitioning exchanges of secondary carriers whose target exchange will implement intraLATA presubscription on December 9, 1998.—Southwestern Bell Telephone Company 8 MPSC 3d 1.

§19. Financing practices

The Commission approved a telephone company's plan to borrow up to \$32,976,550 from the Rural Utilities Service and the Rural Telephone Bank to fund improvements to the company's system. The telephone company was required to maintain an equity ratio equal to or greater than forty percent and was required to submit quarterly surveillance data reports to the Commission's Financial Analysis Department.—Mark Twain Rural Telephone Company 8 MPSC 3d 164.

§24. Equipment

The Commission denied Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record, noting that the parties were afforded an equal opportunity to respond to the Arbitration Advisory Staff Report. Each party was allowed to file comments on the proposed rates and on the costing model, and to support its position with affidavits and schedules. The Commission also held a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the Arbitration Advisory Staff, and the Office of the Public Counsel.—AT&T, Southwestern Bell Telephone Company 8 MPSC 3d 50.

Pursuant to its Memorandum of Understanding with the Department of Labor and Industrial Relations and in view of the fact that the Department of Labor and Industrial Relations has promulgated emergency regulations, the Commission will rescind all of its prior orders concerning the Adaptive Telephone Equipment Program (ATEP). —ATEP 8 MPSC 3d 90.

§29. Local service

The Commission is not inclined to recognize a service as local where the telephone company charges the customer per minute-of-use for that service.—GTE Midwest, Inc. 8 MPSC 3d 26.

Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.—GTE Midwest, Inc. 8 MPSC 3d 26.

§31. Long distance service

Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.—GTE Midwest, Inc. 8 MPSC 3d 26.

The Commission approved a stipulation and agreement whereby Miller Telephone Company agreed to reduce its earnings on an annual basis by approximately \$90,708. The stipulation and agreement eliminated the company's Touchtone additive and authorized the company to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small companies. The Commission rejected an intervenor's proposal to bring interLATA and intraLATA access rates to parity.—PSC Staff vs Miller Telephone Company 8 MPSC 3d 145.

The Commission approved Southwestern Bell Telephone Company's tariff sheets, which offered an interim one-way Message Telecommunications Service to replace Community Optional Service in the petitioning exchanges of secondary carriers whose target exchange will implement intraLATA presubscription on December 9, 1998.—Southwestern Bell Telephone Company 8 MPSC 3d 1.

§33. Billing practices

The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.—Southwestern Bell Telephone Company 8 MPSC 3d 186.

The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.—Goodman Telephone Company 8 MPSC 3d 190.

The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.—BPS Telephone Company 8 MPSC 3d 197.

The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.—ALLTEL 8 MPSC 3d 212.

The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.—Green Hills Telephone Corporation 8 MPSC 3d 220.

The Commission approved a stipulation and agreement that resolved a complaint brought by the Staff of the Commission against a telephone company for switching the authorized long distance service provider of some 400 Missouri citizens to the company without the citizens' knowledge or consent in violation of Sections 392.200(3) and 392.240(2), RSMo.—PSC Staff vs Long Distance Services, Inc. 8 MPSC 3d 271.

The Commission allowed a local exchange company to modify the notices they were ordered to provide to customers concerning intraLATA toll dialing parity.—ALLTEL 8 MPSC 3d 334.

The Commission allowed a local exchange company to modify the notices they were ordered to provide to customers concerning intraLATA toll dialing parity.—BPS Telephone 8 MPSC 3d 335.

§34. Pricing policies

The Commission is not inclined to recognize a service as local where the telephone company charges the customer per minute-of-use for that service.—GTE Midwest, Inc. 8 MPSC 3d 26.

IV. RELATIONS BETWEEN CONNECTING COMPANIES

§36. Relations between connecting companies generally

The Commission denied Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record, noting that the parties were afforded an equal opportunity to respond to the Arbitration Advisory Staff Report. Each party was allowed to file comments on the proposed rates and on the costing model, and to support its position with affidavits and schedules. The Commission also held a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the Arbitration Advisory Staff, and the Office of the Public Counsel.—AT&T, Southwestern Bell Telephone Company 8 MPSC 3d 50.

The Commission determined that the Primary Toll Carrier Plan was incompatible with federally-mandated intraLATA toll dialing parity, and ordered that the plan end.—Investigation PTC/IntraLATA dialing parity 8 MPSC 3d 176.

Section 252(b)(1) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996, provides that "during the period of the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues."—BroadSpan Communications, Inc. 8 MPSC 3d 237.

Section 252(d) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

Determinations by a State Commission of the just and reasonable rate for . . . network elements for purposes of subsection (c)(3) of such section –

- (A) shall be –
 - i. based on the cost (determined without reference to a rate-of-return other rate based proceeding) of providing the . . . network element . . . , and
 - ii. nondiscriminatory, and
- (B) may include a reasonable profit.—BroadSpan Communications, Inc. 8 MPSC 3d 237.

In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission established a nonrecurring loop qualification rate of \$15.00 per loop for provisioning of ADSL service using unbundled network elements.—BroadSpan Communications, Inc. 8 MPSC 3d 237.

In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission rejected a plan that would establish a small monthly recurring charge and instead established non-recurring, up-front charges for conditioning loops for provisioning ADSL service using unbundled network elements.—BroadSpan Communications, Inc. 8 MPSC 3d 237.

In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission found that the non-recurring charge for a shielded cross-connect should be the same as the charge for a non-shielded cross-connect.—BroadSpan Communications, Inc. 8 MPSC 3d 237.

The Commission granted some requests to clarify its Report and Order, and denied some requests. It allowed several local exchange companies to modify the notices they were ordered to provide to customers.—Investigation PTC/IntraLATA dialing parity 8 MPSC 3d 245.

§39. Division of revenue, expenses, etc.

After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$254,504.75. The agreement

reduced interLATA access rates and removed the intraLATA Carrier Common Line cap. Included in the agreement is the elimination of the company's Touchtone additive and the authorization of new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies. The Commission also allowed the company to retire existing plant, resulting in an extraordinary amortization of approximately \$1,250,000, to be amortized at a rate of \$250,000 for five years.—Mid-Missouri Telephone Company 8 MPSC 3d 152.

The Commission determined that the Primary Toll Carrier Plan was incompatible with federally-mandated intraLATA toll dialing parity, and ordered that the plan end.—Investigation PTC/IntraLATA dialing parity 8 MPSC 3d 176.

The Commission granted some requests to clarify its Report and Order, and denied some requests. It allowed several local exchange companies to modify the notices they were ordered to provide to customers.—Investigation PTC/IntraLATA dialing parity 8 MPSC 3d 245.

V. ALTERNATIVE REGULATION AND COMPETITION

§45. Local exchange competition

The Commission found that the telephone company's tariff that did not separate the extended calling plan from the basic local service for the purposes of resale by competitors, would preclude any effective facilities-based local competition by resale, and therefore, the tariff should be rejected.—GTE Midwest, Inc. 8 MPSC 3d 26.

The Commission concluded that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.—GTE Midwest, Inc. 8 MPSC 3d 26.

The Commission concluded that pursuant to Section 251(c)(4) of the Telecommunications Act of 1996, local exchange carrier have the duty to offer for resale at wholesale rates any telecommunications service that the carrier.—GTE Midwest, Inc. 8 MPSC 3d 26.

§46.1. Interconnection Agreements-Arbitrated

The issue of call rating, that is, whether a particular call shall be rated as a local call or a toll call in an interconnection environment, is an appropriate matter for arbitration under the Act.—Mid-Missouri Cellular 8 MPSC 3d 102.

The Commission agrees with SWBT that a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the V&H coordinates of the cellular exchange lie within the local calling area of the landline exchange.—Mid-Missouri Cellular 8 MPSC 3d 102.

The Commission determines that the location of the originating cell at the start of a cellular to landline interMTA call is to be determined by the location of the POI of the cellular and landline networks at the beginning of the call.—Mid-Missouri Cellular 8 MPSC 3d 102.

Interconnection agreement submitted in compliance with Commission's Arbitration Order was approved as meeting the requirements of the Telecommunications Act of 1996.—Mid-Missouri Cellular/Southwestern Bell Telephone Company 8 MPSC 3d 173.

VALUATION

I. IN GENERAL

- §1. Generally
- §2. Constitutional limitations
- §3. Necessity for
- §4. Obligation of the utility

II. JURISDICTION AND POWERS

- §5. Jurisdiction and powers generally
- §6. Jurisdiction and powers of the State Commission
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of local authorities

III. METHODS OR THEORIES OF VALUATION

- §9. Methods or theories generally
- §10. Purpose of valuation as a factor
- §11. Rule, formula or judgment as a guide
- §12. Permanent and tentative valuation

IV. ASCERTAINMENT OF VALUE

- §13. Ascertainment of value generally
- §14. For rate making purposes
- §15. Purchase or sale price
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V. FACTORS AFFECTING VALUE OR COST

- §17. Factors affecting value or cost generally
- §18. Contributions from customers
- §19. Appreciation
- §20. Apportionment of investment or costs
- §21. Experimental or testing cost
- §22. Financing costs
- §23. Intercorporate relationships
- §24. Organization and promotion costs
- §25. Discounts on securities
- §26. Property not used or useful
- §27. Overheads in general
- §28. Direct labor
- §29. Material overheads
- §30. Accidents and damages
- §31. Engineering and superintendence
- §32. Preliminary and design
- §33. Interest during construction
- §34. Insurance during construction
- §35. Taxes during construction
- §36. Contingencies and omissions
- §37. Contractor's profit and loss
- §38. Administrative expense
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- §41. Miscellaneous

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- §42. Buildings and structures
- §43. Equipment and facilities
- §44. Land
- §45. Materials and supplies
- §46. Second-hand property
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- §48. Good will
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VIII. WORKING CAPITAL

- §57. Working capital generally
- §58. Necessity of allowance
- §59. Factors affecting allowance
- §60. Billing and payment for service
- §61. Cash on hand
- §62. Customers' deposit
- §63. Expenses or revenues
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IX. DEPRECIATION

- §68. Deprecation generally
- §69. Necessity of deduction for depreciation
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X. VALUATION OF PARTICULAR UTILITIES

- §74. Electric and power
- §75. Gas
- §76. Heating
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- §78. Water
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VALUATION

No cases in this volume involved the question of valuation.

WATER

I. IN GENERAL

- §1. Generally
- §2. Certificate of convenience and necessity
- §3. Obligation of the utility
- §4. Transfer, lease and sale
- §5. Joint Municipal Utility Commissions

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- §6. Jurisdiction and powers generally
- §7. Jurisdiction and powers of the Federal Commissions
- §8. Jurisdiction and powers of the State Commission
- §9. Jurisdiction and powers of local authorities
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- §12. Operation generally
- §13. Construction and equipment
- §14. Maintenance
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- §28. Financing practices
- §29. Security issues
- §30. Rules and regulations
- §31. Billing practices
- §32. Accounting Authority orders

WATER

I. IN GENERAL

§1. Generally

The Commission approved an increase in revenue of \$175,283 for Ozark Shores Water Company under the informal rate case procedure. The revenue increase included an increase in reconnection charges and allowed the implementation of a returned check fee.—
Ozark Shores Water Company 8 MPSC 3d 16.

§2. Certificate of convenience and necessity

The Commission found that the water utility applicant met the five-part test to determine if a certificate of convenience and necessity should be granted.—Osage Water Company 8 MPSC 3d 280.

A water company was granted a certificate of convenience and necessity for an area on the condition that it build a water tower to serve that area within a certain time. When the water company failed to build the tower within the time allowed, its certificate for the area was canceled.—Incline Water & Sewer 8 MPSC 3d 363.

The Commission vacated an earlier order dismissing the case for failure to prosecute, and granted a certificate of convenience and necessity pursuant to a unanimous stipulation and agreement.—Ozark Shores Water Company 8 MPSC 3d 404.

III. OPERATIONS**§16. Rates and revenues**

The Commission approved an increase in revenue of \$175,283 for Ozark Shores Water Company under the informal rate case procedure. The revenue increase included an increase in reconnection charges and allowed the implementation of a returned check fee.—Ozark Shores Water Company 8 MPSC 3d 16.

Where a small water utility was in extremely poor condition, had been abandoned by its operator, leaving its customers in danger of a loss of service, and a rate increase was necessary in order to make possible the sale of its system to a municipality, the increase and sale were in the public interest and would be approved.—McCord Bend Water Company 8 MPSC 3d 388.

§30. Rules and regulations

Commission approved agreement of the parties in case in which water service customer had improperly installed a second meter in company's meter box and customer agreed to remove the second meter.—House of Denmark vs St. Louis County Water Company 8 MPSC 3d 253.

§31. Billing practices

The Commission approved an increase in revenue of \$175,283 for Ozark Shores Water Company under the informal rate case procedure. The revenue increase included an increase in reconnection charges and allowed the implementation of a returned check fee.—Ozark Shores Water Company 8 MPSC 3d 16.

§32. Accounting authority orders

An Accounting Authority Order is a device by which the Commission gives authorization to a utility to account for a cost in a different manner than called for by the Uniform System of Accounts.—United Water Missouri, Inc. 8 MPSC 3d 124.

An Accounting Authority Order usually grants a utility the authority to capitalize certain costs on its books that would normally be charged to expense. This deferral allows the utility the opportunity to seek recovery of the capitalized costs in a subsequent rate proceeding.—United Water Missouri, Inc. 8 MPSC 3d 124.

It is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case. Therefore, deferral of costs from one period to a subsequent rate case should be allowed only on a limited basis.—United Water Missouri, Inc. 8 MPSC 3d 124.

In order to justify the issuance of an Accounting Authority Order to permit the deferral of such costs, the costs incurred by the utility must result from an event or circumstance that is extraordinary, unusual and unique, and not recurring.—United Water Missouri, Inc. 8 MPSC 3d 124.

Extraordinary costs would include costs associated with Acts of God such as storm damage, fire or flood. However, extraordinary costs might also include costs resulting from man-made decisions that result in significantly changed business conditions.—United Water Missouri, Inc. 8 MPSC 3d 124.

**REPORTS OF
THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI**

**In the Matter of Southwestern Bell Telephone Company's Tariff
Designed to Offer One-Way COS-Type Service to Customers
as a Result of IntraLATA Presubscription.**

*Case No. TT-99-234
Decided December 3, 1998*

Telecommunications §§ 14, 31. The Commission approved Southwestern Bell Telephone Company's tariff sheets, which offered an interim one-way Message Telecommunications Service to replace Community Optional Service in the petitioning exchanges of secondary carriers whose target exchange will implement intraLATA presubscription on December 9, 1998.

ORDER APPROVING TARIFF

Southwestern Bell Telephone Company (SWBT) filed tariff sheets on November 23, 1998, proposing to offer an interim one-way Message Telecommunications Service (MTS) to replace Community Optional Service (COS) in the petitioning exchanges of secondary carriers whose target exchange will implement intraLATA presubscription on December 9, 1998. SWBT proposes a flat monthly rate of \$23.00 for residential customers and \$33.00 for business customers for unlimited MTS calling to the target exchange, including all Extended Area Service exchanges associated with the target exchange.

The Staff of the Commission filed a recommendation on November 25, 1998. Staff indicated that SWBT characterizes its proposal as interim COS and has requested expedited approval and Commission authorization to make its proposal available to customers on December 9, 1998. Staff further noted that SWBT's proposal would offer the service to customers only as an option and only until such time as intraLATA presubscription is offered to customers in the petitioning exchange or until July 1, 1999. The specific exchanges in which the interim COS service will be available are shown on the proposed original tariff sheets.

Staff also notes that SWBT's proposed rates are the same as rates previously approved by the Commission for GTE in a similar offering. Staff has no objections to SWBT's proposal and recommends Commission approval at the Commission's earliest convenience. Staff further recommends the Commission grant SWBT's request to make the service available on December 9, 1998.

The Commission has reviewed SWBT's application and the Staff recommendation. The Commission finds that SWBT's proposed new interim one-way Message Telecommunications Service plan is just and reasonable. Accordingly, SWBT's proposed tariff sheets shall be approved.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets, submitted on November 23, 1998, by Southwestern Bell Telephone Company, are approved:

P.S.C. Mo.-No. 26

Original Sheet 53

Original Sheet 54

Original Sheet 55

2. That this order shall become effective on December 9, 1998.

3. That this case may be closed on December 16, 1998.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.

Ruth, Regulatory Law Judge

In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Missouri Service Area.*

In the Matter of Missouri Gas Energy's Proposed Modifications to its Facilities Extension Policy.

Case Nos. GR-98-140 & GT-98-237

Decided December 8, 1998

Evidence, Practice and Procedure § 1. The Commission granted reconsideration and rehearing on a specific issue where an error was made by the parties when calculating the rate scenarios as directed by the Commission, and where that error had not been discovered before the Report and Order was issued. The Commission found that its decisions in every case should be deliberate and based upon competent and substantial evidence.

Evidence, Practice and Procedure § 1. The Commission granted rehearing on a specific issue to allow further evidence to be taken on the issue of valuation of an adjustment to the revenue requirement where that adjustment had been stipulated to by the parties, but where no adjustment in the final revenue requirement calculations was made.

Evidence, Practice and Procedure § 1. The Commission denied rehearing and reconsideration where the gas company argued that the Commission incorrectly interpreted its own order.

Evidence, Practice and Procedure § 23. The Commission rejected the intervenor's argument that it had not received due process where the Commission had issued notice of the true-up hearing and the intervenor failed to appear and produce evidence and the true-up hearing.

*See page 394, Volume 7 MPSC 3d, for another order in this case.

8 Mo. P.S.C. 3d

Evidence, Practice and Procedure § 24. The Commission denied movant's arguments for a stay in a gas company's rate case where the Commission found no lack of due process and that its findings were based on competent and substantial evidence.

**ORDER GRANTING RECONSIDERATION AND REHEARING IN PART,
ORDER DENYING RECONSIDERATION AND REHEARING IN PART, AND
ORDER DENYING MOTION TO STAY AND ALTERNATIVE REQUEST TO
COLLECT SUBJECT TO REFUND**

I Introduction

The Commission issued its Report and Order (R&O) on August 21, 1998, authorizing Missouri Gas Energy (MGE or Company) to file revised tariff sheets including a rate increase of \$13,217,754 and all other changes to the tariff sheets consistent with the findings of this order. In its R&O, the Commission rejected the tariffs filed by MGE, Tariff File No. 9800264 and Tariff File No. 9800387. MGE was also granted a new accounting authority order wherein it was authorized to defer and book safety line replacement program (SLRP) costs, property taxes, and depreciation costs related to the SLRP main and line replacement program for the period beginning the day after the effective date of the R&O, September 3, 1998, and continuing through the end of the true-up period as applied in the next rate case when it is filed by the Company.

II Missouri Gas Energy's Application for Rehearing and Motion for Reconsideration; Motion for Clarification

On September 1, 1998, MGE filed its Application for Rehearing and Motion for Reconsideration. MGE also included in its pleading a request entitled Motion for Clarification. In its application and motions, MGE included various allegations of error by the Commission, which are outlined by R&O Section and discussed below.

R&O II.1.2.d. Exclusion of Unamortized Balance of SLRP Deferrals

MGE stated that the Commission's exclusion of the unamortized balance of SLRP deferrals from the rate base is an error by the Commission which deprives MGE of an opportunity to earn a reasonable return on its investment, is confiscatory in violation of the United States Constitution, Fifth and Fourteenth Amendments, and is in violation of the Missouri Constitution, Article I, Section 10. Further, MGE stated that the Commission's decision to exclude the unamortized balance of the SLRP deferrals from rate base is not supported by substantial and competent evidence and is not accompanied by adequate findings of fact. In its arguments, MGE apparently assumes that the Commission is directing MGE to reverse treatment authorized by prior orders and that the Commission is now retroactively disallowing inclusion of the SLRP deferral balances previously authorized to be included in the rate base. The Commission did not order the retroactive application of the exclusion of the unamortized balance of the SLRP deferrals to previous cases where those amounts

have already been included in rate base and amounts calculated. If the Company can separate the funds affected under prior decisions which permitted the unamortized balance to be included in the rate base from the SLRP deferral amounts deferred under the authority of the most recent accounting authority order authorized in Case No. GO-97-301, the Commission has no objection to its doing so and continuing to include unamortized balance amounts existing and treated during prior cases in the rate base. However, if the Company cannot separate the funds identified as unamortized balance which would have been in place at the time of the prior order permitting inclusion of the unamortized balance of the SLRP deferrals in rate base, then the entire account currently known as the unamortized balance of SLRP deferrals shall be excluded from the rate base. This order should have a minimal effect on the Company as the prior balance should be greatly reduced. MGE's arguments are not persuasive in regard to this unamortized balance issue and the application for rehearing and motion for reconsideration will be denied.

R&O II.1.2.d. SLRP Deferrals: Effect of Exclusion of Unamortized Balance on Associated Deferred Taxes

MGE alleged that the Commission's decision to exclude the unamortized balance of the SLRP deferrals has had an inadvertent effect of reducing the rate base by approximately \$700,000 because of offsets made to the revenue requirements which reduced the revenue requirement to account for associated deferred taxes as recommended by MGE and the Commission Staff. According to MGE, this offset which reduced the revenue requirement for the associated deferred taxes is only appropriate if the unamortized balance of the SLRP deferrals is included in the rate base. MGE states that as part of the calculations on this issue these offsets were not removed when calculations regarding the exclusion of the unamortized balance recommended by the Office of the Public Counsel (OPC), were completed, thereby lowering the revenue requirement improperly by approximately \$700,000. This offset calculation should have been included in the scenarios submitted to the parties by the Commission in Exhibit 236. By its own error, MGE inadvertently failed to correct the appropriate scenario where it was designated that the Commission would take OPC's position on the unamortized balance issue. However, as the Commission's decisions in every case should be deliberate and based upon competent and substantial evidence, the Commission will grant reconsideration and rehearing on this issue.

R&O II.1.3 Billing Process Improvement Costs

MGE alleged that the Commission's decision to disallow certain costs from rates related to billing process improvement costs incurred by MGE was arbitrary, capricious, unjust, unreasonable and unlawful because it directly contradicted the Commission's "emphatic encouragement" for MGE to improve its customer service. MGE suggested that if the Commission was truly committed to achieving quality customer service, then it should grant rate recovery of costs reasonably and necessarily incurred to achieve improvements in customer service quality. The

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Commission's encouragement was empathetic, not emphatic. While it was the Commission's desire to mildly commend the Company for improvements toward restoring a basic level of customer service, there was considerably disagreement among the Commission as to whether or not the improvement was sufficient. The Company should not be rewarded for providing that basic level of customer service that constitutes the minimally required service level. Improvements the Company may make upon the basic level of customer service which is consistently maintained may warrant more. The Commission would like to see a higher level of quality customer service than what a company may believe it is minimally obliged to provide as the strict requirements of law.

MGE also objected to the Commission's notation that MGE had failed to provide the cost/benefit analysis and schedule for completion of the BASIC Team's Summary of Findings and the Commission's statement that it "expects the Company to comply with the Stipulation and Agreement as approved before the Company files its next rate proceeding." MGE stated that it believes that the Commission's expectation is arbitrary, capricious, unreasonable, unlawful and unjust. In support of its position, MGE indicated that it believes there was no point in performing the detailed financial cost/benefit analysis the Commission appears to require given that the record evidence shows that MGE has already fully implemented the BASIC Team Summary of Findings.

MGE erroneously interprets the Commission's decision to condition the filing of MGE's next rate case on full compliance with the Stipulation and Agreements in Case Nos. GC-97-33 and GC-97-497. There was no statement in the Commission's R&O which indicated that the Commission would prevent or refuse any filing made by MGE; only that the Commission expected compliance with its order in Case Nos. GC-97-33 and GC-97-497, wherein MGE made a promise. MGE promised to provide a detailed financial cost/benefit analysis and time schedule for completion of the recommendations made by the BASIC Team. During the pendency of this case, MGE failed to provide the information as it had promised. This issue is a matter of credibility on the part of the company. The Commission would like to be assured that when the Company promises to provide information such as a cost/benefit analysis, and the Company's agreement is incorporated into an order issued by the Commission, that the Company will comply with the orders of this Commission.

If the originally agreed upon item, such as a time schedule for completion of the recommendations made in the BASIC Team Summary of Findings appears to no longer be necessary, the Company may consider substituting a summary of the improvements as recommended by the BASIC Team Summary of Findings and the dates when those were completed. In addition, submitting the cost/benefit analysis, giving specific information, for all parties' review, would establish basic compliance with prior agreements and orders. If the Company believes that these things are no longer useful to the parties in litigating the issues in Case No. GR-98-140 and Case No. GT-98-237, the Company should be assured that completion of these promised

items would, at least, reinforce the efforts the Company has made in establishing or maintaining the credibility this party has with the Commission and the other parties. Therefore, reconsideration or rehearing would not be appropriate, and the application for rehearing and the motion for reconsideration will be denied.

R&O I.A. Stipulation and Agreement of Gross up-Uncollectible Expense and Gross down - Late Payment Charge Revenues

MGE stated that the Commission initially authorized an overall revenue increase of \$13,217,754. On August 26, 1998, the Commission issued its Order of Correction changing the overall revenue increase to \$13,297,499 due to a mathematical error. MGE noted that in the Stipulation and Agreement agreed to by all the parties and approved by the Commission, the parties agreed to, or did not oppose, the gross up of the revenue deficiency for uncollectible expense and the gross down of the revenue deficiency for late payment charge revenues (gross up/gross down adjustment). (Exhibit 190, Stipulation and Agreement, p. 3, Item S). MGE stated that this gross up/gross down adjustment had been included in MGE's revenue requirement from the outset of the proceeding, citing Exhibit 92, Hernandez Direct Testimony, Revenue Deficiency Summary, Schedule A, lines 8-11. Further, MGE stated that this gross up/gross down adjustment was shown on the reconciliations presented to the Commission and identified as Exhibit 229, page 1. MGE stated that the gross up/gross down adjustment produces an overall revenue increase of \$13,404,463. The figures provided by MGE represent an increase of the revenue requirement by \$106,964.

In reviewing Exhibit 229, the Commission is unable to identify any increase adjustment requested in the amount of \$106,964. Examination of the revised revenue requirements and scenarios, late-filed Exhibits 235 and 236, does not reveal any increase adjustment in the amount of \$106,964. In addition, there are no adjustments identified as the adjustment to the revenue requirement as required by Item S on the Stipulation and Agreement or as the gross up of the revenue deficiency for uncollectible expense and the gross down of the revenue deficiency for late payment charge revenues. This adjustment item is part of the Stipulation and Agreement and ordered by the Commission. Rehearing shall be granted to allow evidence to be taken on the issue concerning the appropriate valuation of Item S of the Stipulation and Agreement.

R&O III., p. 64-65 Effective Date of Tariff

MGE claimed that the Commission's R&O which required MGE to file revised tariff sheets with a 30-day effective date is unlawful, unjust and unreasonable. MGE was concerned that the compliance tariff sheets filed on August 28, 1998 would not be approved by the Commission to be effective on September 2, 1998, the original operation of law date. As the Commission approved the compliance tariff sheets effective September 2, 1998, this matter is moot. However, this is a good opportunity to review the applicable statutes in this area.

As cited by MGE, Section 393.150, RSMo (1994), permits the Commission to suspend proposed tariffs for a period no longer than 120 days plus six months beyond

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the initial proposed effective date. Once the tariff submitted by the party has been timely rejected, all necessary time requirements referred to in Section 393.150, RSMo (1994), have been met and the matter is complete. To argue that any subsequent tariff must bear the same effective date as the rejected tariff would be to deny the Commission the ability to suspend a tariff which failed to comply with the Commission's R&O.

Regardless of the effective date, Section 393.140, RSMo, controls the filing requirements for tariffs filed with the Commission in compliance with an order or decision of the Commission. Section 393.140 specifically states

Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. The commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe.

In this case, the issue of whether the Ordered Paragraph 4 which required MGE to file revised tariff sheets with a thirty day effective date is reasonable is moot because pursuant to 393.140, RSMo, and for good cause shown, the Commission approved the revised tariff sheets effective September 2, 1998. MGE is unable to cite either statute or case law that specifically states that revised tariffs must be approved by the Commission by the operation of law of the original tariff date pursuant to Section 393.150, RSMo. (1994). The Commission's past practice is not binding on future Commissions, and therefore, previous Commission practice is of no precedential value. Even though this matter was moot, the Commission found it important to review these areas of the statutes for the benefit of the parties. As this issue is moot, the application for rehearing and motion for reconsideration will be denied.

R&O II.1.2.a. SLRP Deferral: Carrying Cost Rate; Stub Period Treatment

MGE stated in its motion that the Commission's decision establishing the appropriate carrying cost rate to use for the SLRP deferrals at the AFUDC rate of 6.107 percent is unlawful, unjust and unreasonable because it was not accompanied by adequate findings of fact, it was contrary to the weight of the evidence and that the Commission's decision deprived MGE of an opportunity to achieve a reasonable return in violation of the federal and state constitutions. MGE further alleged that the Commission's decision finding that the account balance for the SLRP deferral period beginning on November 1, 1996 began at a zero balance was arbitrary,

capricious, unreasonable, unjust, unlawful and unsupported by substantial and competent evidence because it allegedly contradicts the Commission's previous order in Case No. GO-97-301. MGE implied that the Commission has incorrectly interpreted its own order in Case No. GO-97-301. This argument is not persuasive and the application for rehearing and motion for reconsideration will be denied.

R&O II.1.1. Return on Equity

MGE stated in its motion that the return on equity authorized for Southern Union Company was arbitrary, capricious, unlawful, unjust and unreasonable because it allegedly did not adequately explain its deviation from past precedent. This argument does not accurately consider all the factors upon which the Commissioners' decision was based. Therefore, this argument is not persuasive and the application for rehearing and motion for reconsideration will be denied.

R&O II.1.2.a. Customer Charge Levels

MGE alleged that the Commission's decision to maintain all customer charge levels at the same level was unlawful, unjust, unreasonable and contrary to the overwhelming weight of the evidence with respect to the customer charge for the small general service (SGS) class because the evidence of all of the parties making customer charge recommendations showed that the SGS customer charge should be increased by at least \$1.45. MGE also stated that the residential customer charge should also have been adjusted upward. This argument is not persuasive and the application for rehearing and motion for reconsideration will be denied.

Conclusion

Except where specifically indicated above that rehearing or reconsideration should be granted, the Commission finds that the arguments for rehearing or reconsideration of the issues raised by the Company are not persuasive and in regard to all issues except for those specifically designated otherwise by the Commission, the Company's Application for Rehearing and Motion for Reconsideration will be denied. In regard to those issues where it is specifically designated in this order that the issue shall be reconsidered or reheard, the Commission finds that it would first be appropriate to direct MGE to file a Revised Reconciliation for Reconsideration (for Exhibit Nos. 229 and 235, using the format as designated in Exhibit 235). The Company shall file any prefiled testimony as required to specifically support and identify the calculations and figures relating to the associated deferred taxes offset and the gross up/gross down adjustment issues as referred to earlier in this order.

III. Missouri Gas Energy's Motion for Clarification

MGE requested clarification on the deferral period authorized by the accounting authority order issued as part of the R&O. The Commission's R&O directed the deferral period for the AAO to begin the day after the effective date of the R&O, specifically September 3, 1998. MGE indicated that they did not believe the Commission intended this result and requested clarification.

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Conclusion

The Commission did, in fact, intend to designate the beginning of the AAO deferral period as the day after the effective date of the R&O, specifically September 3, 1998. As there is no specifically required period for AAOs, this beginning date, accruing the SLRP deferrals into a zero balance account provides the clearest direction to the party without the likelihood of confusion involving overlapping periods.

IV. Office of the Public Counsel's Application for Rehearing

On September 1, 1998, the Office of the Public Counsel (OPC) filed its Application for Rehearing. In its application, OPC stated that portions of the R&O issued by the Commission on August 21, 1998 are unlawful, unjust, unreasonable, arbitrary, capricious, involved an abuse of discretion, and are not supported by substantial and competent evidence. OPC stated that the Commission's decision relating to the amortization period of ten years for SLRP deferrals lacks sufficient finding of fact to support the conclusion and fails to provide the reviewing courts with the path of reasoning which the Commission followed to reach its decision. Further, OPC stated that the 20-year amortization period proposed by Staff and OPC was supported by competent and substantial evidence and better effectuates the matching principal. Conclusion

The Commission finds that there is competent and substantial evidence recited in the R&O issued on August 21, 1998 to support its finding in support of the ten-year amortization period. OPC's Application for Rehearing is unpersuasive and the application for rehearing will be denied.

V. MGUA's and Jackson County's Applications for Rehearing

On September 1, 1998, both the Midwest Gas Users' Association (MGUA) and Jackson County, Missouri (Jackson Co.) filed Applications For Rehearing And Request For Stay Or In The Alternative, A Request That The Increased Rates Be Collected Subject To Refund. Both parties also filed a Request For Expedited Consideration. As the applications for rehearing and the motions filed on behalf of MGUA and Jackson County, Missouri, are identical documents, this order will address both of these documents simultaneously.

MGUA and Jackson County alleged that the Commission had erred in its R&O by:

A. adopting the rate design the Commission ordered in GR-96-285 and reliance upon a decision which has currently been stayed by the Cole County Circuit Court as unlawful, unreasonable and an unconstitutional rate design (R&O II.2.1);

B. failing to decide the contested issues where a specific finding was required relating to (1) uncollectibles, (2) AMR, and (3) gas supply inventories (MGUA and Jackson County alleged that these three specific items were not expenditures that the

large volume service class members should bear as they did not participate in any part of the creation of that cost.)(R&O II.2.1);

C. authorizing an excessively high rate of return, with a rate of equity of 10.93 percent, that is not supported by competent and substantial evidence, is unreasonable and unlawful (R&O II.1.1);

D. authorizing a SLRP deferral period of ten years which is not supported by competent and substantial evidence, is unlawful and arbitrary (R&O II.1.2.b.);

E. permitting recovery of the current PSC assessment dated July 1, 1998 because such finding is not supported by competent and substantial evidence, violates the Commission's own prior order, is arbitrary, unlawful and constitutes single issue rate making (R&O II.1.4);

F. permitting MGE to recover 50 percent of the expenditures of the Public Affairs and Community Relations Department because the decision is not supported by competent and substantial evidence, is unlawful, is against the weight of the evidence and is arbitrary and capricious (R&O II.1.3);

G. failing to find that the time restriction to convert transportation service customers to sale service customers is unreasonable and unjust (R&O II.2.5.d);

H. failing to approve a complaint procedure for LVS customers (R&O II.2.5.e);

I. failing to order MGE to conduct a study of current cost of EMG equipment was arbitrary, unlawful, unjust and unreasonable (R&O II.2.5.g); and

J. failing to make any findings as to MGE's current level of revenues allegedly in dispute.

MGUA and Jackson County also renewed their objections and requests for rehearing and reconsideration on their objections to the true-up hearing and order. Previously, MGUA, Jackson County, University of Missouri-Kansas City and Central Missouri State University-Warrensburg (identified then as MGUA and Jackson Co., et al.) filed their Joint Objection to Non-Unanimous Stipulation and Agreement Pursuant to 4 CSR 240-2.115(3) on April 17, 1998. Hearing was held on that objection on April 28, 1998. The Commission issued its Order Establishing True-Up Audit and Hearing on June 11. On June 22, MGUA filed its Application for Rehearing or Reconsideration of Midwest Gas Users' Association, which was denied by the Commission on July 15. MGUA and Jackson Co. now renew their allegation that the true-up proceeding was unlawful, unjust, unreasonable and in violation of state and federal constitutional due process. In addition, MGUA and Jackson Co. alleged that certain unspecified agreements among the parties at the true-up hearing failed to provide due process notice.

Discussion: Due Process Claim

All parties received notice of the true-up hearing in the Commission's Order Establishing True-up Audit and Hearing which was issued on June 11, 1998. In that order, the Commission scheduled the true-up hearing to be held on July 16, 1998 at 9:00 a.m. Both MGUA and Jackson Co. failed to appear at the true-up hearing on July 16, 1998. There were no stipulations or agreements entered into for which the

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parties did not get appropriate notice. Further, any party who was not present at the true-up hearing to submit contradictory or contravening evidence, testimony or argument waived those arguments by their absence. Notice was given to all parties and such notice was reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them the opportunity to present their objection. *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 314 (1950). The elementary and fundamental requirement of due process has been met.

Discussion: Failure to Decide Contested Issues

MGUA and Jackson Co. alleged that the Commission failed to decide several contested issues for which MGUA and Jackson Co. claimed that the Commission must make a specific finding. MGUA and Jackson Co. requested that the Commission make a specific finding as to whether uncollectible and AMR expenditures were attributable to the large volume service (LVS) class of customers. Further, MGUA and Jackson Co. alleged that the Commission failed to make findings of facts or conclusions of law regarding the issue of the proper amount of expense and cost associated with gas supply inventories to assign or allocate to the LVS class of customers.

In its arguments, MGUA and Jackson Co., et al., would have the Commission decide a few issues specifically and independently on their own while discussing or deciding all the remaining class cost of service and attributable expense issues as part of the class cost of service studies. This is not appropriate. It was determined by the Commission that all of the attributable expenses issue should be handled under the general topic of class cost of service and rate design. It was not necessary or required that the Commission make a specific finding as to a particular sub-issue where the Commission could make that determination as part of the more general issue found under Section II.2. in its R&O regarding class cost of service and rate design. All of the classes and their attributable expenditures were considered in the class cost of service studies.

In regard to the issue of gas supply inventories, the Commission would refer MGUA and Jackson Co. to the Stipulation and Agreement, Attachment A to the Commission's Report and Order, page 1, the parties specifically designate gas inventory as one of the revenue requirement issues resolved. There are no exceptions noted as part of the Stipulation and Agreement. Attachment B to the Commission's Report and Order, the Addendum to Stipulation and Agreement, contained no reference to a change in the Stipulation and Agreement filed on May 20, 1998 to the settled issue of gas inventories. Neither MGUA nor Jackson County objected to informal disposition of settled issues through these settlement agreements. §536.060, RSMo. (Cum. Supp. 1997) As this matter was indicated as not contested, there is no error by the Commission for failing to make findings of facts or conclusions of law in relation to this issue.

Conclusion

The Commission finds the movants' arguments unpersuasive and the motion for reconsideration and rehearing will be denied.

VI. MGUA's and Jackson County's Request for Stay, or In The Alternative, Request That The Increased Rates Be Collected Subject to Refund

On September 1, 1998, as part of its application for rehearing, MGUA and Jackson Co. filed their Request for Stay or in the Alternative a Request that the Increased Rates be Collected Subject to Refund and a Request for Expedited Consideration. On September 11, MGE filed its Response in Opposition to Requests for Stay or in the Alternative, Requests that the Increased Rate Be Collected. On September 16, MGUA and Jackson Co. filed a Joint Reply to MGE's Response to Requests for Stay or in the Alternative Requests that the Increased Rates Be Collected Subject to Refund.

MGUA and Jackson Co. request in their motion that "any rate increases contained in Missouri Gas Energy's tariff P.S.C. Mo. No. 1, Third Revised Sheet No. 25, 28, 31, 32, 76 and 77 and tariff sheet P.S.C. Mo. No. 1, Second Revised Sheet No. 38, as proposed by MGE be stayed, or in the alternative, that any such increases be ordered approved on an interim basis until the Commission renders a final decision on rehearing and order collected subject to the refund" While MGUA and Jackson Co. repeat their request in the prayer of their pleading, there is no discussion or argument offered in support of this request.

As part of their Application for Rehearing, MGUA and Jackson Co. alleged that by maintaining the status quo for the class cost of service and the rate design in this case, the Commission has erred by adopting the rate design that the Commission ordered in Case No. GR-96-285. This is alleged to be an error because the Cole County Circuit Court has found that the class cost of service and rate design portion of the decision in Case No. GR-96-285 should be reversed for failure to hold a hearing after rejecting the parties' stipulation and agreement. The Cole County Circuit Court did not base its finding upon the substantive issues relating to the class cost of service or rate design. In fact, due to the lack of due process, the Cole County Circuit Court never reached a review of the substantive issues relating to class cost of service and rate design.

In this case, a full hearing was held, all parties had full notice and opportunity to be heard on the issues of class cost of service and rate design, and the Commission considered all of the evidence submitted by the parties. Thereafter, the Commission found that there was no competent and substantial evidence upon which to declare that the current class cost of service was unjust and unreasonable and that any one of the variations of the class cost of service and rate design submitted by the parties was a just and reasonable option. Therefore, as all of the parties have had full notice and an opportunity to be heard on the issue of class cost of service and rate design for the Missouri Gas Energy's rate case, the need for a hearing on the remand is now moot. Permitting another hearing on the issue of class cost of service and rate design

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based upon the remand order separately from the case that was just heard would be inappropriate, unnecessary and not in the interest of the efficient administration of justice. An additional hearing would only be giving the parties yet another bite of the apple. Nothing in the Cole County Circuit Court's order remanding this issue to the Commission suggests that any such thing would be necessary.

The Commission found in this case, Case Nos. GR-98-140 & GT-98-237, based upon the testimony adduced in this case, that

the current division of cost by class remains just and reasonable.

The Commission finds that there is not sufficient evidence presented in the record to support the findings proposed by the parties to change the current class cost of service percentage. There has not been any evidence of a significant change or development that would have supported any of the changes proposed. Therefore, there should be no change in the class cost of service as allocated among the rate classes and found to be just and reasonable under the prior case, Case No. GR-98-285, issued on October 31, 1996[sic].

(R&O, p. 43-44) The fact that the Commission made a similar decision in this case as it previously found in Case No. GR-96-285 does not assume that the Commission made such a finding with the same flaw of lack of due process. In Case No. GR-96-285, the Commission found

that the revenue requirement increase shall be allocated among the customer classes on the same basis as current revenues. . . , as reflected in the compliance filing by Staff on January 17, 1997. The basis of the rejection of the agreement is that no compelling evidence has been produced to justify the . . . shift as proposed

. . . .

(Report and Order, Case No. GR-96-285, Issued January 22, 1997)

Since the lack of due process issue does not exist in Case No. GR-98-140 & GT-98-237, and the Commission's finding is supported based upon competent and substantial evidence, there is no error. (Exhibit #160, Rebuttal Testimony of F. Jay Cummings, p. 3-7.)

Conclusion

The Commission finds the movants' arguments for stay unpersuasive and, therefore, the movants' Request for Stay or In The Alternative, Request That The Increased Rates Be Collected Subject to Refund will be denied.

IT IS THEREFORE ORDERED:

1. That the Verified Application for Rehearing and Motion for Reconsideration filed by Missouri Gas Energy on September 1, 1998 is granted in part and denied in part.

2. That the Motion for Clarification filed by Missouri Gas Energy on September 1, 1998 is denied.

3. That the Application for Rehearing filed by the Office of the Public Counsel on September 1, 1998 is denied.

4. That the Application for Rehearing of Midwest Gas Users' Association and Request for Stay or In The Alternative A Request That The Increased Rates Be Collected Subject To Refund filed by Midwest Gas Users' Association on September 1, 1998 is denied.

5. That the Application for Rehearing of Jackson County, Missouri and Request for Stay or, In The Alternative, A Request That The Increased Rates Be Collected Subject To Refund filed by Jackson County, Missouri on September 1, 1998 is denied.

6. That the Request for Expedited Consideration filed by the Midwest Gas Users' Association and Jackson County, Missouri is granted.

7. That Missouri Gas Energy shall be responsible for filing a Revised Reconciliation for Reconsideration, along with an affidavit or direct testimony needed. The affidavit and testimony prefiled shall specifically and clearly explain the individual amounts and updated calculations relating to (a) the Stipulation and Agreement Section Income Statement, Item s. Gross-up of revenue deficiency related to uncollectible expense and gross-down of revenue deficiency related to late payment charge revenues and (b) the correction of the associated deferred taxes related to the inclusion of the unamortized balance of SLRP deferrals. Missouri Gas Energy shall be responsible for seeking any necessary input from the other parties necessary to comply with this order. The Revised Reconciliation for Reconsideration shall be filed no later than 3 p.m. on December 23, 1998.

8. Any party wishing to cross-examine witnesses on the Revised Reconciliation for Reconsideration or present rebuttal testimony on issues (a) or (b) as set forth in Ordered Paragraph No. 6, shall either file their rebuttal testimony or a request for a hearing no later than 3 p.m. on January 4, 1999.

9. If a hearing is requested no later than January 4, 1999, the hearing regarding only issues (a) or (b) as set forth in Ordered Paragraph No. 6 of this order shall be held on January 12, 1999 in the Commission's hearing, Room 520B, on the fifth floor of the Truman State Office Building, Jefferson City, Missouri beginning at 9:00 a.m.

10. That this order shall be effective on December 8, 1998.

Lumpe, Ch., Crumpton, Schemenauer and Drainer, CC., concur.
Murray, C., absent.

Register, Regulatory Law Judge

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John Reed, Complainant, v. Missouri Public Service, Respondent.*

Case No. EC-99-131
Decided December 8, 1998

Evidence, Practice and Procedure §§24, 25, 27. Complainant filed a complaint on October 1, 1998, against Respondent. On October 6, 1998, the Commission issued a Notice of Complaint, requiring an answer by November 6, 1998. Respondent late-filed an answer on November 12, 1998. On December 8, 1998, the Commission entered an order finding that the Respondent is in default and that all allegations set forth in the complaint are deemed admitted.

ORDER OF DEFAULT

John Reed (Complainant) filed a formal complaint with the Missouri Public Service Commission on October 1, 1998 against Missouri Public Service (MPS or Respondent). The Complainant alleges that MPS billed him \$1,200 in March of 1998 for electrical services he did not use. The Complainant asks that the overbilling be corrected and that all late charges from past due bills during the disputed time period be removed.

On October 6, 1998, the Commission issued a Notice of Complaint to the Respondent by certified mail requiring the Respondent to answer by November 6, 1998. Pursuant to 4 CSR 240-2.070(9) if the respondent in a complaint case fails to file an answer within the time period allowed, the respondent is in default and the allegations of the complaint are deemed admitted by the respondent. Respondent filed an answer on November 12, 1998, more than thirty days after the Notice of Complaint was sent. The Commission finds that the Respondent is in default and the allegations in the complaint are deemed admitted by the Respondent.

IT IS THEREFORE ORDERED:

1. That the Respondent is in default and that all allegations set forth in the complaint are deemed admitted.
2. That this Order shall become effective on December 18, 1998.

Lumpe, Ch., Crumpton, Drainer and Schemenauer, CC., concur.
 Murray, C., absent.

Gandhi, Regulatory Law Judge

*The Commission, in an order issued on March 4, 1999, ordered Missouri Public Service to remove from John Reed's electrical bill the total amount of \$1,159.95 plus the late charges, if any, associated with that amount.

In the Matter of Ozark Shores Water Company for a Small Company Rate Increase.

Case No. WR-99-183

Decided December 10, 1998

Water § 1. The Commission approved an increase in revenue of \$175,283 for Ozark Shores Water Company under the informal rate case procedure. The revenue increase included an increase in reconnection charges and allowed the implementation of a returned check fee.

Water §§ 16, 31. The Commission approved an increase in revenue of \$175,283 for Ozark Shores Water Company under the informal rate case procedure. The revenue increase included an increase in reconnection charges and allowed the implementation of a returned check fee.

ORDER APPROVING TARIFF

Pursuant to the Commission's informal rate procedure, on June 27, 1997, Ozark Shores Water Company (Company) filed a tariff designed to increase its rate for water service. In its request, the Company stated that it was seeking changes to its monthly customer rates that would result in an increase of \$81,123 (15 percent) in its total annual water operating revenues. The Company also wished to increase certain service charges. At the time of its request, the Company provided water service to approximately 1,009 residential customers and 16 commercial customers.

The Company notified its customers of its request by a letter dated July 15, 1997. The contents of this letter had been previously approved by the Staff of the Public Service Commission (Staff). The Staff received one letter as a result of the Company's July 1997 customer notice. The letter requested denial of the rate increase if it applies to unimproved lot owners in Four Seasons. Staff noted, however, that the rate increase does not apply to unimproved lot owners. The Office of the Public Counsel (OPC) received two customer letters addressing the initial customer notice. The first letter, a fax, referred to complaints about the mineral content in the water. The second letter expressed a complaint that the proposed 15 percent increase seemed steep, and stated that substantial growth has greatly increased the Company's income.

Based upon its audit of the Company's books and records, an evaluation of the Company's depreciation rates and an analysis of the Company's capital structure and cost of capital, the Staff concluded that the Company could justify an increase of \$75,283 in its annual water service operating revenues. In addition, the Staff concluded that, based upon an analysis of charges for other utilities, the requested increase in the reconnection charges to \$25.00 from \$10.00 is appropriate. The Staff also determined that a "Returned Check Fee" is appropriate and recommended that a "Reconnection of Service for Seasonal Disconnects Charge" be implemented. The Staff recommended no changes to the Company's system operations as a result of its investigation of the Company's request.

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By a letter dated August 24, 1998, the Company stated its agreement with the Staff's recommended increase of \$75,283 in the Company's annual operating revenues. On September 22, 1998, Mr. John Coffman of the OPC verbally advised the Staff that the OPC had not yet made a final decision about the recommended increase, but that it agreed with Staff that the company should send a notice to its customers regarding the Staff's recommended increase.

On October 27, 1998, the Company submitted a written Agreement Regarding Disposition of Small company Rate Increase Request and a copy of the Company's notice to its customers regarding the rate increase agreement between the Company and the Staff. As with the first notice, the Company requested that its customers' questions or comments be directed to the Staff and/or the OPC.

Regarding the Company's second customer notice, the Staff received one customer fax and one customer telephone call. The customer who telephoned complained about the magnitude of the increase and requested that a public hearing be held. The customer that submitted the fax complained about the period allowed for payments, requested the Company initiate an automatic payment withdrawal program, requested more time to pay the water bill before shutting off the water, and stated that the language regarding seasonal reconnections was confusing. Additionally, the OPC advised the Staff of two customer responses (one letter and one fax) which it had received in response to the second customer notice. The fax received by OPC was the same one that the Staff received. The letter OPC received complained that the increase "is outrageous."

The OPC sent a letter on November 19, to the Staff and the Company which indicated that the OPC was in agreement with the proposal. On November 30, the Staff filed a recommendation that the Commission approve the tariff sheets listed below, for service rendered on and after December 11, 1998:

P.S.C. MO. No. 1

1st Revised Sheet No. 11, Canceling Original Sheet No. 11

3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14

1st Revised Sheet No. 14A, Canceling Original Sheet No. 14A

The Staff further recommended and requested that the Commission's order include approval of the depreciation rates set out in Attachment G to the recommendation.

The Commission finds the proposed tariff sheets (tariff file 9700873), as submitted on October 27, 1998, to be reasonable and justified. The Commission will adopt the proposed tariff for service on or after December 11, 1998.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets, filed October 27, 1998, by Ozark Shores Water Company, are approved for service on or after December 11, 1998:

P.S.C. MO. No. 1

1st Revised Sheet No. 11, Canceling Original Sheet No. 11

3rd Revised Sheet No. 14, Canceling 2nd Revised Sheet No. 14

1st Revised Sheet No. 14A, Canceling Original Sheet No. 14A

2. That the depreciation rates set out in an attachment to the Staff's November 30, 1998, memorandum are approved.

3. That this order shall become effective on December 11, 1998.

4. That this case may be closed after December 12, 1998.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC.,
concur.

Ruth, Regulatory Law Judge

**In the Matter of the Application of Schell Sanitation, Inc., ex rel., for
Approval to Transfer its Franchise Workhorse System to the
City of Springfield, Missouri.**

Case No. SM-98-559
Decided December 15, 1998

Rates §18, Sewer §§1, 4. The sale and transfer of assets of a private public utility providing water and sewer services outside of a municipality to that municipality would not be detrimental to the public interest and is approved because the public utility is operating at capacity and continuation of operations would require significant capital improvement and a higher rate increase than customers will experience under the municipality's rate structure.

Public Utilities §13, Sewer §2. Upon completion of the sale transaction and transfer of assets approved by the Commission, the certificate and tariffs held by the regulated water and sewer company were cancelled, as requested.

ORDER APPROVING SALE AND TRANSFER OF ASSETS

On June 15, 1998, Schell Sanitation, Inc. (Schell) filed an application with the Commission pursuant to Section 393.190, RSMo 1994, and Commission Rule 4 CSR 240-2.060(5), requesting the Commission: A) approve the sale and transfer of Schell assets, as described in Appendix 2 attached to the application, to the City of Springfield, Missouri (Springfield); B) authorize Schell to dissolve its corporation on the completion of the sale and transfer; C) authorize Schell to discontinue providing sanitary sewer services and treatment services in its certificated area as of the date of sale and transfer of its franchise, works and system to the City of Springfield,

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Missouri; and, D) grant such other relief deemed appropriate and proper to accomplish the purposes of the application.

Schell stated that it is a duly organized sanitary sewer corporation and public utility as defined in Section 386.020, RSMo, and has a Certificate of Convenience and Necessity from the Commission issued February 24, 1978, in Case No. SA-78-190. Schell is, therefore, subject to the jurisdiction, supervision and control of the Commission over the transmission, collection and treatment of sanitary sewer waste in Schell's service area in Greene County, Missouri.

Schell stated that Springfield is a home rule charter city located in Greene County, Missouri, authorized by the statutes and the charter of the city to operate a sanitary sewer system. Springfield operates its sanitary sewer system under a permit from the Missouri Department of Natural Resources. Schell stated that Springfield provides a sewer collection system in the area served by Schell, which is now capable of collecting sewage waste from the area served by Schell and transmitting this waste to the treatment facilities operated by Springfield. Schell stated that its operating permit from the Missouri Department of Natural Resources is conditioned upon the requirement that Schell cease operating its treatment facilities when a publicly operated treatment system becomes available. Due to recent improvements in the sanitary sewer collections systems operated by Springfield, this publicly operated treatment system is now able to provide sewer treatment services to the customers whose property is located in the area served by Schell.

Schell stated that the proposed transfer will not harm the public interest even though some customers may experience a rate increase. Schell stated the proposed transfer will have minimal impact on the tax revenues of the political subdivisions in which Schell's facilities are located in that Greene County will only lose a total of \$139-\$140 in property taxes previously paid by Schell because Springfield will not be required to pay any amount of taxes as a political subdivision.

On September 11, Schell filed its document entitled Late Filing of Exhibits by Applicant. Those late-filed exhibits included the following:

Exhibit AA - a letter from the applicant's attorney to the City of Springfield attorney confirming the extension of the closing date to January 1, 1999;

Exhibit BB - a copy of the letter notifying Schell's customers of the application for sale and transfer of assets; and

Exhibit CC - a letter from professional engineer Robert R. Schaefer, Assistant Director of Public Works, City of Springfield, Missouri, indicating that the Missouri Del Prado trunk sewer is completed and available for connection of sewers.

The Staff of the Commission (Staff) filed its memorandum on September 23, recommending approval of the sale and transfer of assets from Schell to Springfield.

Staff stated that the Commission granted Schell's certificate to provide water and sewer service in Prairie View Heights Subdivision, Greene County, by order in Case No. SA-78-190 issued October 6, 1978, and effective October 17, 1978. Staff stated that Schell seeks to transfer its sewer assets to Springfield, which has an existing municipally owned sewer utility that is not subject to regulation by the Commission. Staff stated that a proposed contract was attached to the application, and that, in a filing made on September 11, 1998, Schell reported that the closing date had been extended to January 1, 1999.

In regard to the rate changes that Schell's customers may experience, Staff stated that Schell's current rate is a flat rate of \$42.35 per quarter. Springfield's rate is based upon water use during winter months, and is \$7.78 per month plus \$0.85 per 100 cubic feet. The impact for any given customer would depend upon water use. Staff stated that the application indicated that the typical water use for Springfield water utility customers is 700 cubic feet per month. Customers with this amount of water use would experience a 2.8 percent rate decrease. Staff stated that it considers 800 cubic feet to be generally typical water use; therefore, the Staff believes that customers with this amount of water use would experience a 3.3 percent increase. A rate comparison based upon water use per cubic feet per month was attached to the Staff's memorandum.

Staff stated that there are several benefits to the public that will result from this sale. The existing small treatment facility, sized to serve the subdivision, will be eliminated in favor of a connection to Springfield's regional-size sewer system. Schell's sewer system, although outside the city limits, is within the area for which the Springfield's facility is able to provide service. Staff stated that this will be a benefit because Schell's existing treatment facility is at capacity, and there have been operational problems. Staff stated that if the Schell sanitation system were to remain in operation, it would likely need to be expanded and improved, or replaced, at considerable capital cost. In addition, Staff stated that this sale will result in sewer service being provided by a large, stable utility. Generally, Staff stated that Schell had been providing good service to its customers but that larger utilities are able to provide good service on a long-term basis, and are better able to respond to emergency situations.

Staff stated that no interventions were filed by the deadline date ordered by the Commission, July 27, 1998. Further, Staff stated that it received no calls or letters expressing concern about this transfer. Staff stated that the sale and transfer as proposed is not detrimental to the public interest, and Staff recommends the Commission approve the sale and transfer of assets requested. Approval of the sale and transfer of assets from Schell to Springfield should include cancellation of Schell's certificate of public convenience and necessity and cancellation of Schell's current tariff effective January 1, 1999.

The Commission has reviewed the application of Schell and Staff's memorandum. The Commission finds that the sale and transfer of the assets described in the

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application would not be detrimental to the public interest. Section 393.140, RSMo (1994). The Commission finds that the application should be approved. The Commission also finds that Schell's certificate and accompanying tariffs should be canceled.

IT IS THEREFORE ORDERED:

1. That the application filed by Schell Sanitation, Inc. on June 15, 1998, is approved.
2. That Schell Sanitation, Inc. is authorized to sell and transfer the assets as agreed in the Agreement for Sale of Assets attached to its application, to the City of Springfield, Missouri.
3. That Schell Sanitation, Inc.'s certificate of public convenience and necessity shall be canceled on January 1, 1999.
4. That Schell Sanitation, Inc.'s tariffs shall be canceled on January 1, 1999.
5. That this order shall become effective on December 29, 1998.
6. That this case may be closed after January 2, 1999.

Lumpe, Ch., Crumpton, Murray and Drainer, CC., concur.
Schemenauer, C., absent.

Register, Regulatory Law Judge

In the Matter of Missouri Public Service's Tariff Revisions to be Reviewed in its 1995-1996 Actual Cost Adjustment.

Case No. GR-96-192
Decided December 16, 1998

Gas §17.1. The Commission approved a stipulation and agreement that resolved all disputes about the reasonableness of the company's storage withdrawals during the 1995/1996 winter season.

Gas §17.1. The Commission found that the company's captive firm customers received the appropriate capacity release credits during the ACA period because the company's sales of released capacity to its marketing affiliate were made at market rate.

APPEARANCES

Dean Cooper, Attorney at Law, Brydon, Swearengen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for UtiliCorp United, Inc., d/b/a Missouri Public Service.

Cherlyn D. McGowan, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Douglas E. Micheel, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 56102, for the Office of Public Counsel.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

Case No. GR-96-192 was established on December 13, 1995, for the purpose of receiving UtiliCorp United Inc., d/b/a Missouri Public Services' (UtiliCorp's) annual cost adjustment (ACA) filings for the 1995-1996 period. On October 31, 1996, the Commission issued its standard form protective order in response to a Motion for Protective Order filed by the Staff of the Missouri Public Service Commission (Staff). Staff filed its recommendation on July 1, 1997. On July 3, the Commission issued a notice to the parties indicating that any response to Staff's recommendation was to be filed no later than August 4. On August 15, UtiliCorp filed its Response to Staff's Recommendation along with a Motion for Leave to Late-File Response to Staff Recommendation. On August 26, the Commission issued an Order Granting UtiliCorp's Motion for Leave to Late-file Response to Staff Recommendation and directed the parties to file a proposed procedural schedule or stipulation and agreement no later than September 12.

Staff and UtiliCorp each filed proposed procedural schedules, and on September 25, the Commission issued its Order Establishing Procedural Schedule and Providing Notice. Pursuant to the procedural schedule, the parties prefiled direct, rebuttal and surrebuttal testimony. On February 10, 1998, UtiliCorp filed a Motion to Supplement Prefiled Rebuttal Testimony of Mr. Warnock. On February 18, Staff filed a response indicating that Staff did not object to UtiliCorp's Motion to Supplement provided that Staff was afforded an opportunity to file reasonable supplemental surrebuttal. On February 23, the Commission issued an order granting UtiliCorp's Motion to Supplement which granted Staff an opportunity to file reasonable supplemental surrebuttal testimony. Staff filed the supplemental surrebuttal testimony of Mr. Wallis on February 27.

A prehearing conference was held on March 3. The parties filed a Hearing Memorandum on March 11. UtiliCorp filed a Motion to Defer Capacity Release Issues on March 13. On March 23, the parties filed a Unanimous Stipulation and Agreement Concerning the Storage Utilization Issue. The evidentiary hearing was held on March 24. On March 26, Staff filed Staff Data Request 74 & Response Workpapers marked as late-filed Exhibit No. 22. No party filed an objection to late-filed Exhibit No. 22. UtiliCorp and Staff filed initial and reply briefs. Public Counsel filed letters indicating that it chose not to file either initial or reply briefs.

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Stipulation and Agreement

UtiliCorp, Staff and Public Counsel filed their Unanimous Stipulation and Agreement Concerning Storage Issue (Stipulation and Agreement) on March 23. The Stipulation and Agreement states that Staff had proposed an adjustment to UtiliCorp's Southern System costs in the amount of approximately \$510,000, based on Staff's belief that UtiliCorp's storage withdrawals during the 1995/1996 winter season were not reasonable. UtiliCorp had taken the position that storage withdrawals were reasonable given the circumstances existing at the time. The Stipulation and Agreement states that the parties have reached a resolution and settlement of the Storage Utilization issue which they believe to be reasonable and beneficial to ratepayers in that it would speed the resolution of this issue and avoid the expenses associated with litigation and possible appeal.

The parties agreed that UtiliCorp's Southern System gas costs should be adjusted in the amount of \$190,000. The parties further agreed that to the extent that the Commission approves and adopts the matters addressed in the Stipulation and Agreement, the parties would waive, with respect to the Storage Utilization issue only, their rights to call, examine and cross-examine witnesses; present oral argument or written briefs; and their rights to the reading of the transcript and to judicial review.

The Commission has reviewed the Stipulation and Agreement and determines that it is a reasonable resolution of the Storage Utilization issue. The Commission finds that the Stipulation and Agreement is beneficial to ratepayers in that it will avoid the expenses associated with litigation and possible appeal of this issue and will speed the resolution of this issue. Therefore, the Commission will order the approval of the Stipulation and Agreement.

Motion to Defer Capacity Release Issues

UtiliCorp filed a motion on March 13 requesting that the Commission issue an order deferring the capacity release issues in the 1994-1995 ACA and 1995-1996 ACA Cases to Case No. OX-98-183, In the Matter of a Rulemaking to Govern Interaffiliate Transactions Among Electric, Gas, Hearing, Sewer, and Water Companies. UtiliCorp argued that the adjustments were not ripe for decision, that the rulemaking case involved the same parties and the same issues, and that the issues would more appropriately be addressed in the rulemaking case. Staff opposed that motion.

UtiliCorp's motion to defer the capacity release issues to the rulemaking case was rendered moot by the Commission's April 21 order in Case Number OX-98-183, which rejected all the proposed rules that had been filed in that case and closed the case effective May 1. As UtiliCorp's motion is now moot, it is denied.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings

of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Staff witness Michael J. Wallis testified regarding Staff's proposed capacity release adjustment. Mr. Wallis testified that firm captive customers of UtiliCorp did not receive full credit for the total transportation charges collected from end-user customers by UtiliCorp Energy Solutions (UES), a marketing affiliate of UtiliCorp. Mr. Wallis testified that UES has established a special niche market with regard to the end-user customers of UtiliCorp because of: (1) UES' affiliate relationship with UtiliCorp; (2) UES' access to the system assets of UtiliCorp; (3) UES' access to the end-user customers of UtiliCorp; and (4) UES' provision of a bundled sales service to UtiliCorp's end-user customers. As a result of UES' use of the pipeline transportation contracts and pipeline capacity to serve UtiliCorp's end-user customers and because the firm captive customers are paying the fixed/reservation charges associated with the pipeline transportation service, Mr. Wallis stated that the captive firm customers of UtiliCorp are entitled to a credit equal to the transportation charges assessed to the end-user customers of UtiliCorp by UES.

UtiliCorp witness Daniel W. Warnock, the Vice President - Gas Supply for UtiliCorp, testified regarding the release of capacity from UtiliCorp to UES. Mr. Warnock testified that UES does not have a competitive advantage over other marketers on UtiliCorp's system. Mr. Warnock pointed out that UtiliCorp releases its capacity to entities other than UES and that almost half of the transportation customers on UtiliCorp's system are served by marketers other than UES. According to Mr. Warnock, UtiliCorp reviews the interstate pipeline's electronic bulletin board and calls other LDCs, marketers and brokers to determine that UES pays the prevailing market rate when it purchases capacity from UtiliCorp.

Mr. Warnock testified that Staff's recommendation will result in capacity transfers from UtiliCorp to UES at above-market rates. The result of this action, according to Mr. Warnock, is that UES will be forced to get its capacity from a source other than UtiliCorp, at a market based rate, and UtiliCorp will be forced to find another purchaser for its capacity. Mr. Warnock testified that there is a high likelihood that another purchaser will not be found for at least some of the capacity, so the end result will be lower capacity transfer credits to UtiliCorp's customers, which will harm the general system customers.

The Commission finds that it has previously addressed this issue in the Report and Order issued on September 23, 1998 in case number GR-95-273. In rejecting the Staff's position in that case, the Commission concluded that:

UtiliCorp's captive firm customers received the appropriate capacity release credits during the 1994-95 ACA period. UtiliCorp presented persuasive testimony demonstrating that its sales of

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released capacity to UES were made at market rate. Staff's testimony corroborated UtiliCorp's assertion. Staff failed to demonstrate persuasively any competitive advantage accruing to UES as a result of these sales, or any improper affiliate transactions.

No evidence was presented in this case which would lead to a different result for the 1995-96 ACA period that is being reviewed in this case.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

UtiliCorp United Inc., d/b/a Missouri Public Service, is a gas corporation as defined under Section 386.020(18), RSMo Supp. 1997.

UtiliCorp United Inc., d/b/a Missouri Public Service, is an investor-owned public utility engaged in the provision of natural gas service in the State of Missouri and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, RSMo.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1997.

Orders of the Commission must be based upon competent and substantial evidence on the record. Section 536.140, RSMo (1994). Based upon its findings of fact, the Commission concludes that the adjustments proposed by Staff to UtiliCorp's gas costs for the 1995-1996 period, and disputed by UtiliCorp, are not supported by competent and substantial evidence and shall not be implemented.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed by UtiliCorp United Inc., d/b/a Missouri Public Service, the Office of the Public Counsel, and the Staff of the Missouri Public Service Commission on March 23, 1998, is hereby approved (See Attachment A).

2. That the Motion to Defer Capacity Release Issues filed by UtiliCorp United Inc., d/b/a Missouri Public Service, on March 13, 1998, is denied as moot.

3. That Staff's recommendation to reduce UtiliCorp United Inc., d/b/a Missouri Public Service, gas costs by an amount equal to the transportation charges assessed to the end-user customers of UtiliCorp by UtiliCorp Energy Solutions, is denied.

4. That the Staff Data Request 74 & Response Workpapers filed on March 26, 1998, are received into the record as late-filed Exhibit No. 22.

5. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.

6. That this Report and Order shall become effective on December 29, 1998.

Crumpton, Murray, and Drainer, CC., concur; Lumpe, Ch., dissents; certify compliance with the provisions of Section 536.080, RSMo 1994. Schemenauer, C., not participating.

EDITOR'S NOTE: Attachment A, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of GTE Midwest Incorporated's Proposed Revision of its PSC MO. NO. 1 to Introduce LATA-wide GTE Extended Reach Plan.

Case No. TT-98-545
Decided December 17, 1998

Evidence, Practice and Procedure § 5. The Commission denied Staff's motion to strike the testimony of telephone company's witness at the hearing where the Commission found that by a referencing "replacement codes" in a footnote of the tariff the parties had been put on notice that a service in the tariff was only to be considered an unbundled service. In addition, the Commission found that Staff had demonstrated it had notice of the issue by questioning the witness about the footnote containing the issue and that the intervenor had notice of the issue because the intervenor's witness referred to the issue in his testimony.

Evidence, Practice and Procedure §23. The Commission denied Staff's motion to strike the testimony of telephone company's witness at the hearing where the Commission found that by a referencing "replacement codes" in a footnote of the tariff the parties had been put on notice that a service in the tariff was only to be considered an unbundled service. In addition, the Commission found that Staff had demonstrated it had notice of the issue by questioning the witness about the footnote containing the issue and that the intervenor had notice of the issue because the intervenor's witness referred to the issue in his testimony.

Rates § 13. The Commission found that the service was not a toll service where it contained a flat rate and a per minute-of-use rate for the service.

Rates § 13. Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.

Rates § 85. Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.

Rates § 91. The Commission found that the service was not a toll service where it contained a flat rate and a per minute-of-use rate for the service.

Rates § 91. Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.

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Telecommunications § 29. The Commission is not inclined to recognize a service as local where the telephone company charges the customer per minute-of-use for that service.

Telecommunications § 29. Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.

Telecommunications § 31. Because the telephone company bundled its flat rate with a per minute-of-use rate, the Commission found that the service was too similar to the company's other toll services to be considered a local service and therefore, the service was not properly filed in the company's local exchange tariff.

Telecommunications § 34. The Commission is not inclined to recognize a service as local where the telephone company charges the customer per minute-of-use for that service.

Telecommunications § 45. The Commission found that the telephone company's tariff that did not separate the extended calling plan from the basic local service for the purposes of resale by competitors, would preclude any effective facilities-based local competition by resale, and therefore, the tariff should be rejected.

Telecommunications § 5. The Commission has authority to review all tariffs filed with the Commission and to reject or suspend tariffs that fail to comply with state law, Commission rule or order, if they include unjust or unreasonable rates, or are not in the public interest.

Evidence, Practice and Procedure § 26. The burden of proof to show that a proposed tariff is just and reasonable is upon the company filing the tariff.

Telecommunications § 45. The Commission concluded that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.

Telecommunications § 45. The Commission concluded that pursuant to Section 251(c)(4) of the Telecommunications Act of 1996, local exchange carrier have the duty to offer for resale at wholesale rates any telecommunications service that the carrier

APPEARANCES

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Mark W. Comley, Newman, Comley & Ruth P.C., 601 Monroe Street, Suite 301, Post Office Box 537, Jefferson City, Missouri 65102-0537, for COMPTel-Mo.

Kenneth A. Schiffman, Attorney, Sprint Communications Company L.P., 8140 Ward Parkway, 5E, Kansas City, Missouri 64114, for Sprint Communications Company L.P.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Stephen F. Morris, Attorney, MCI Telecommunications Corporation, 701 Brazos, Suite 600, Austin, Texas 78701, for MCI Telecommunications Corporation.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and

Peace Valley Telephone Company (the Mid-Missouri Group of Local Exchange Companies).

W.R. England, III, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for: ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company (the Small Telephone Company Group).

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Penny G. Baker, Deputy General Counsel, and *Dennis L. Frey*, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior.

REPORT AND ORDER

Procedural History

GTE Midwest Incorporated (GTE) submitted proposed revisions to its Local Exchange Tariff, PSC MO. NO. 1 on May 22, 1998. The proposed revision offers an optional one-way, local calling plan called the GTE Extended Reach Plan (ERP) which allows the customer to call all exchanges within the customer's Local Access Transport Area (LATA). The tariff sheets had an effective date of June 22.

On June 2 AT&T Communications of the Southwest, Inc. (AT&T) and the Mid-Missouri Group of local exchange telecommunications companies (MMG)¹

¹ For purposes of this case, the Mid-Missouri Group consists of: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

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each filed applications to intervene and motions to suspend the tariff. Similar applications to intervene and motions to suspend were later filed by MCI Telecommunications Corporation (MCI), COMTEL-Mo, and the Small Telephone Company Group (STCG).² On June 8 the Staff of the Commission (Staff) filed a motion to suspend the tariff.

The Commission issued an order on June 11 granting intervention to MCI, AT&T, COMTEL-Mo, STCG, and MMG. The Commission suspended the tariff sheets until October 20, 1998, scheduled an early prehearing conference, and directed the parties to file a procedural schedule. On June 26 Sprint Communications Company L.P. (Sprint) filed an Application for Intervention. The parties met in prehearing conference on July 1 at which time Sprint's motion to intervene was granted by the Regulatory Law Judge.

On July 9 GTE and Staff filed a joint motion to establish a procedural schedule and requested that a protective order be issued. On July 10 MCI, AT&T, Sprint, COMTEL-Mo, MMG, STCG, and the Office of the Public Counsel (OPC) filed a joint response. On July 16 the Commission issued an order establishing a procedural schedule, granting a protective order, and further suspending the tariff until December 20, 1998. The parties prefiled testimony and a hearing was held on September 14, 15, and 17.

The Commission filed seven separate Notice of Ex Parte Contact memorandums in this case on October 15, 19, 21, and November 3. The notices state that comments relating to this case were received by the Commission from members of the general public.

On October 7 the Commission established a briefing schedule directing that late-filed exhibits were due on October 13, initial briefs were due October 28, and reply briefs were due November 12.

An Order further suspending tariffs was issued on December 10 which suspended the tariff until January 20, 1999.

Pending Motions and Late-Filed Exhibits

At the hearing, Exhibit No. 17HC³ was reserved for late-filing by GTE of an

²For purposes of this case, the Small Telephone Company Group consists of: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

³"HC" denotes highly confidential material.

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exhibit showing the percentage of traffic terminating in exchanges of GTE, SWBT, and other local exchange companies. Exhibit No. 18 was reserved for GTE to file a list of companies in Missouri with which GTE has a “bill and keep” arrangement. Exhibit No. 20HC was reserved for GTE to file the breakdown of projected minutes of usage between business and residential customers. Exhibit No. 24 was reserved for COMPTeL-Mo to file a diagram explaining how aggregation of ERP would work and Exhibit No. 25 was reserved for GTE to file a similar diagram. Exhibit No. 26P⁴ was reserved for GTE to file the switch translations procedures which will be required to implement ERP. GTE and COMPTeL-Mo filed those exhibits on October 13. There were no objections and late-filed Exhibits No. 17HC, 18, 20HC, 25 and 26P were received into the record.

On October 28 GTE, OPC, Sprint, MMG, COMPTeL-Mo, MCI, and STCG submitted their initial briefs. On October 29 Staff filed a Motion to Accept Filing Out of Time along with its initial brief. On November 10 Sprint filed its Revised Initial Brief and also filed a Notice of Filing in Error and Substitution of Revised Initial Brief for Initial Brief.

Reply briefs were filed on November 12 by MCI, GTE, Sprint, STCG, and Staff. COMPTeL-Mo filed a Motion to Accept Reply Brief for Filing One Day Out of Time and its reply brief on November 13. MMG filed its reply brief on November 16 with no request for the Commission to accept it out of time.

No objections to Staff, COMPTeL-Mo, Sprint, or MMG’s briefs or reply briefs were received.

During the course of the hearing Staff objected to any testimony presented at the hearing by GTE’s witnesses related to the bundling of ERP with basic local service. The objection was reduced to writing and a Motion to Strike Supplemental Testimony was filed by Staff on September 15.

Staff argues in its motion that nowhere in the tariff filing and specifically, not in PSC MO. NO. 1, Section 4, Original Sheet 32, Paragraph B., entitled “Service Description,” is there an indication that ERP refers to a “bundled” service which includes local exchange monthly access service, Extended Area Service, and ERP. Staff states that “no party had any notice or had any indication that the GTE Extended Reach Plan, as proposed in the tariff filed on May 22, 1998, as amended by testimony filed by Mr. Graham on August 31, 1998, was a service that was only to be considered as a bundled service.”⁵ As support for its argument that the testimony relating to ERP being a “bundled” service should be stricken from the record, Staff attached to its motion an Order Concerning Motions to Dismiss and Motion to Strike, issued on July 12, 1995, in Case No. TR-95-241.

⁴ “P” denotes proprietary information.

⁵ Motion To Strike Supplemental Testimony, paragraph 9.

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In Case No. TR-95-241, the Commission directed that a Joint Recommendation and prefiled rebuttal testimony of one witness be stricken from the record because they were related to service by local exchange companies (LECs) that were not a part of the tariff at issue. The Commission stated that “[s]ervice by those LECs was not part of the initial tariff sheets and it is those companies’ addition through the Joint Recommendation that renders the Joint Recommendation so inconsistent with the initial pleading that it cannot be maintained in this case.”

GTE responded to Staff’s objection by filing a Memorandum in Opposition to Motion to Strike on September 25. GTE states in its response that: “The terms of the tariff are clear. . . . Under the tariff, this Plan is defined as an optional extension of a customer’s basic local service.”⁶

The tariff does not “clearly” define ERP as being “bundled” with basic local service. However, the tariff does indicate in the footnote at Original Sheet 35 that “replacement codes” will be used for customers subscribing to ERP. And, Sprint’s witness, David E. Stahly, recognized that a potential problem existed when he testified, “GTE will only allow CLECs to resell the Extended Reach Plan if the CLEC also resells GTE’s local service.”⁷ In addition, Staff’s counsel was suspicious enough of the language in the footnote to cross-examine GTE’s witness, Michael V. Chopp, regarding the meaning of the word “from” in the footnote.

The Commission finds that although the tariff does not clearly define the service as “bundled” with basic local service, at least one party did identify the problem prior to hearing, and even Staff cross-examined Mr. Chopp regarding the footnote in the tariff. The inclusion of the testimony explaining the “bundling” language will not unduly prejudice Staff, OPC, or the intervenors to this matter as it points out the confusion regarding the explanations as to what service is being provided under the language in the tariff.

The Commission finds that the testimony regarding the “bundling” of this service should be allowed and, therefore, it will not be stricken from the record.

Discussion

GTE provides telecommunications services in various exchanges throughout the state of Missouri. GTE proposed changes to its Local Exchange Tariff. PSC MO. NO. 1, to introduce an optional calling service entitled the GTE Extended Reach Plan (ERP). ERP allows local customers of GTE to call anywhere in the Local Access and Transportation Area (LATA) for up to thirty hours for a monthly fee. If more than thirty hours of calls are made per month, the calls after thirty hours are billed on a per minute basis.

1. Should GTE’s Extended Reach Plan be classified as a local or a toll service?

GTE witness, Michael V. Chopp, testified that ERP has many characteristics which make it similar to local service. Mr. Chopp testified that ERP uses a seven

⁶ GTE’s Memorandum in Opposition to Motion to Strike, p. 1.

⁷ Rebuttal Testimony of David E. Stahly, p. 5, ll. 6-7.

or ten digit dialing pattern instead of a 1+ dialing pattern which is usually associated with toll plans. Mr. Chopp stated that ERP is similar to the Metropolitan Calling Area (MCA) service in that it is completely optional for the customer, and that MCA is considered a local calling plan. Mr. Chopp also testified that this service is provisioned in the switch like other services which are considered local services.

GTE also argues in its initial brief that “[t]he designation of local is also consistent with customers’ needs and desires for local calling.”⁸ Although Mr. Chopp testifies that ERP was filed in response to GTE’s customers’ needs for expanded calling plans, GTE did not present any specific evidence of this conclusion. On the contrary, Mr. Chopp stated during cross-examination that GTE had not conducted any customer surveys to determine if customers desired this particular plan, and had not conducted any customer surveys for this plan to determine if customers would prefer a local dialing pattern.

Mr. Chopp stated in response to a question during cross-examination that it is important to have the plan classed as local because that is how GTE has it in its marketing plan. Mr. Chopp testified that GTE thought it could better keep contact with its customers if the service was classed as local.

Mr. Chopp testified in response to cross-examination by COMPTel-Mo that it was his understanding that a call made under the ERP plan would use the same network that is used for intraLATA toll calling. Also in response to questions from COMPTel-Mo, Mr. Chopp indicated that the per minute charge for calls over the initial thirty-hour block of time was chosen because of how it compared with toll rates for the same calls.

Both MCI and COMPTel-Mo argue that this service cannot be classified as a local service under the statutory definition. MCI and COMPTel-Mo quote Section 386.020(31), Revised Statutes of Missouri, which defines a “local exchange telecommunications service” as a telecommunications service “between points within an exchange,” and, Section 386.020(24) which defines “interexchange telecommunications service” as service “between points in two or more exchanges.” These intervenors argue that since this is a service between exchanges, it must not be classified as a local service.

GTE argues that ERP should not be classified as a toll service simply because it is interexchange. Both OPC’s witness, Barbara Meisenheimer, and COMPTel-Mo’s witness, Michael J. Ensrud, testified during cross-examination that subscribers in the St. Louis MCA make interexchange calls which are considered local calls. GTE argues that the statutory definitions do not preclude the Commission from classifying services in different portions of a company’s tariff.

⁸ GTE’s Initial Brief, p. 4.

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Ms. Meisenheimer testified that it was the OPC's position that this plan should be considered toll because it is a replacement to COS, which is a toll plan. During cross-examination, Mr. Chopp agreed that ERP is a substitute for toll services. GTE argues that this plan should not be considered toll simply because it is a substitute for other toll plans, as it is also a substitute for MCA which is classified as a local plan. COMPTel-Mo argues in its brief that in the "limited situations in which calling between exchanges has been classified as 'local,' the Commission judged the intensity of interactivity between the exchanges, and based upon the calling patterns and communications, concluded that the two exchanges should be treated as one."⁹

OPC, COMPTel-Mo, Staff, and Sprint argue that in Case No. TT-98-351¹⁰, the Commission rejected arguments similar to GTE's in determining that Southwestern Bell Telephone Company's LATA-wide tariff was not a local calling plan.

Staff's witness, Ben D. Childers, Ph.D., indicates that a local calling plan is generally based on a community of interest standard. Staff argues that GTE has offered no evidence which indicates that a community of interest exists within the ERP's calling scope. COMPTel-Mo's witness, Mr. Ensrud, also testified that calls under this plan are likely to originate and terminate at points over 100 miles apart. According to Mr. Ensrud, there is not likely to be a community of interest between those locations "unlike the degree of interaction which typically exists between locations classified as 'local'".¹¹ COMPTel-Mo argues further that there was no evidence presented regarding the activity level within each LATA being so strong as to justify the local classification.

GTE argues that, as Ms. Meisenheimer testified on behalf of OPC, and Robert G. Schoonmaker on behalf of STCG, no community interest study was done between all the communities in the St. Louis MCA and it is a plan which is classified as local. Staff argues that it is inherently reasonable to assume that a metropolitan area has a community of interest.

Staff and many of the intervenors make the general argument that this plan has more characteristics of toll than of local and should therefore be classified as toll. Dr. Childers testified on behalf of Staff that ERP is very similar to GTE's "Between Friends" toll calling plan which allows the customer a one-hour block of time and \$.13 per minute after the initial hour. Also, according to Dr. Childers, GTE offers an unlimited use intraLATA toll calling plan which is generally referred to as the "Community Optional Service (COS) replacement" plan.¹² Dr. Childers also testified that Staff considers the one-way nature of this calling plan to be more consistent with toll plans than local.

⁹ Initial Brief of COMPTel-Mo, p. 9.

¹⁰ "In the Matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan."

¹¹ Rebuttal Testimony of Michael J. Ensrud, p. 5.

¹² This calling plan is the Extended Exchange Calling Plan (EECP) located in GTE's Long Distance Message Telecommunications Service, PSC MO. NO. 3.

Staff also notes that the price structure is not merely a “flat rate” like other local service, but rather has a per-minute element after the initial thirty-hour block.

Staff recommended in its brief, as did the STCG, that if the Commission should decide that this service is a “hybrid” of local and toll, it should specify how the various aspects of the service should be treated. The Staff recommended that the Commission should:

- a. require that the service be available for resale at wholesale discount rates to both CLECs and IXC, and that the functions to accomplish this are in place before GTE offers the service to the public;
- b. require dialing parity;
- c. be certain the service is priced appropriately; and
- d. require proper detailed billing for customers.

MMG, COMPTel-MO, and STCG also argue that ERP has more characteristics of toll service than of local and is therefore properly classed as a toll calling plan. For instance, STCG’s witness, Mr. Schoonmaker, and COMPTel-MO’s witness, Mr. Ensrud, each testified that the payment of terminating access charges as intercompany compensation is consistent with toll calling plans rather than local.

Michael J. Pauls, on behalf of AT&T also testified that ERP should be classed as toll due to the long distances over which a call can be made and the fact that terminating access charges will be paid as intercompany compensation. Furthermore, GTE’s witness, Thomas L. Vogel, testified that he was not aware of any other local calling plans for which GTE pays terminating access charges as a method of intercompany compensation.

STCG argues that by classifying ERP as a local calling plan, geographic deaveraging of toll is likely to result. Mr. Schoonmaker proposed a hypothetical situation in his testimony that suggested that if GTE were allowed to classify this plan as local, an interexchange carrier might decide to classify every call within 75 miles of the St. Louis or Kansas City metropolitan areas as local and charge a substantially lower rate than its toll rate in the rural areas. STCG did note that if GTE shows, and the Commission finds, that such geographic deaveraging is in the public interest, there is no violation of the statute.

- 2. What is the appropriate costing standard for Extended Reach?**
- and**
- 3. Is imputation required for Extended Reach?**

GTE’s witness, James L. Graham, testified that the Total Service Long Run Incremental Cost (TSLRIC) is the appropriate costing standard for ERP. Mr. Graham stated that GTE did not impute the cost of switched access charges to ERP because an imputation test is not necessary where a service is available for resale. GTE argues that the Commission made such a finding in its order in Case No. TT-98-351.

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GTE also argues that imputation is not necessary because ERP is a local service and imputation has not traditionally been required for local services. Mr. Graham testified that ERP covers incremental costs and makes a positive contribution as shown by the cost study in Ex. 7HC (Schedule JLG-4).

The STCG argues that there are at least three flaws in GTE's cost study. Mr. Schoonmaker testified on behalf of the STCG that GTE's cost study is based on forward-looking TSLRIC, not the cost of the network today or the cost of the local loop. Mr. Schoonmaker also stated that GTE's cost study did not include the cost of the class of service restrictions in the switch.

The STCG argues that the ERP is a toll service, or if not purely toll, than it is a hybrid of local and toll like SWBT's Local Plus® in Case No. TT-98-351. STCG states in its brief, that because ERP is mostly toll, imputation of access charges is necessary.

The STCG presented Exhibit 22HC at the hearing to support its argument that ERP would not pass a cost study using imputed access charges (imputation test). Although Mr. Graham testified that GTE did not conduct its own imputation study, he agreed that Exhibit 22HC showed that ERP would fail an imputation test.

The STCG also argues that GTE has not provided any specific support for the rates it intends to charge. Mr. Schoonmaker testified that he found no support for the price of the thirty-hour block of time or for the per minute charges.

MCI and Staff argue that GTE wants to have this service classified as local so that it can avoid having to pass an imputation test. Staff's witness, Childers, testified that by classifying the service as local rather than toll, GTE is trying to avoid proving that the service is offered above cost. Staff, COMTEL-MO, and MCI argue that the service should be classified as a toll service, and therefore, imputation of access charges is necessary.

Mr. Schoonmaker and Mr. Ensrud testified that GTE must impute the cost of access because ERP is a toll service. Mr. Ensrud stated that "GTE should 'impute' the cost of applicable access to itself, as if a carrier was providing an identical toll service and GTE was charging underlying access to a provider different than itself."¹³ Mr. Ensrud also testified that if GTE is allowed to price ERP below its actual costs, then no other carrier will be able to offer a competitively priced service because a competing carrier will have to pay terminating access charges which will cost more than GTE's retail price for ERP.

Sprint argues that the appropriate costing standard is TSLRIC plus imputed access charges. Sprint suggests that in the alternative, Commission should order GTE to reduce its access charges to TELRIC costs.

4. Should Extended Reach be combined on the customer's bill with other elements of "local" service?

GTE argues that it is appropriate to combine the rate for ERP with the customer's rate for basic local service because the customer would be purchasing

¹³ Rebuttal Testimony of Michael J. Ensrud, p. 9.

a “total local service package.” However, GTE’s witness, Michael V. Chopp, testified at the hearing that GTE would separate ERP for billing purposes if the Commission found that was necessary.

Ms. Meisenheimer testified on behalf of OPC that combining the rates will provide the customer with less information and would be confusing. OPC argues that because this is not an unlimited flat-rated calling plan, combining ERP with basic local service elements would hinder the consumer in his or her ability to compare prices of essential services.

Staff argues that combining the two costs would be contrary to 4 CSR 240-33.040 which requires the bills to state clearly the amount for basic service, and to Section 392.455, RSMo, which requires that “all providers [of basic local telecommunications service] must offer basic local telecommunications service as a separate and distinct service.” Both COMPTel-Mo and MCI argue that combining the costs is not appropriate nor in accordance with the Commission’s decision in Case No. TT-98-351.

5. Should the customer’s bill contain call-detailed information?

Although the tariff as submitted does not include a provision for optional detailed billing, Mr. Graham testified that GTE is willing to make call-detail billing available for a \$1.00 monthly charge. Staff argues that 4 CSR 204-33.040(6) requires detailed billing on every bill because this is a toll service. OPC argues that the Commission found in Case No. TT-98-351 that detailed billing at no more than nominal fee is required. COMPTel-Mo and MCI agree with OPC and also argue that “[i]f the rate for the ERP is embedded in the price of local service, the customer will be unable to make a meaningful comparison of ERP versus MTS rates.”¹⁴

6. Should resale of Extended Reach be made available to IXC’s and/or CLECs?

Mr. Graham and Mr. Chopp testified on behalf of GTE that this plan is a local plan and, therefore, IXCs would not be authorized to resell ERP without certification as a local carrier. Mr. Graham and Mr. Chopp also testified that ERP would not be available for resale by itself. The reseller would also be required to purchase GTE’s basic local service. GTE argues that because ERP is an additive to local service it cannot be separated for resale purposes from basic local service. As support for its argument, GTE points to Mr. Schoonmaker’s cross-examination testimony. The relevant exchange between Mr. Weaver, counsel for GTE, and Mr. Schoonmaker, witness for the STCG, is as follows:

Q. Okay. Wouldn’t you agree that there are several functional obstacles or issues [to] provisioning GTE’s ERP plan which essentially expands local service to a basic local service being provided by another CLEC through its own switching?

¹⁴ MCI Initial Brief p. 11.

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A. I'd agree there is substantial issues there. I'm not sure I could identify all of them, but there certainly are a number of issues there that would have to be considered.

(emphasis added). *Tr. p. 527.*

The STCG argues in its reply brief that the above exchange does not support GTE's contention that Mr. Schoonmaker was admitting to there being obstacles to provisioning ERP so that a facilities-based CLEC can provide the service.

Mr. Schoonmaker did testify under cross-examination that he was not aware of any local calling service that is purchased for resale separately from the underlying basic local service. And, AT&T's witness, Mr. Pauls, testified that he was not aware of any service which is currently available to both IXC's and CLEC's.

COMPTEL-Mo and AT&T argued that not only should ERP be available for resale, but aggregation should also be allowed. GTE presented evidence that if aggregation were allowed, the price for ERP would be a multiple of the proposed rate because the current price is based on the needs and calling patterns of individual end-users. GTE argues that the Federal Telecommunications Act of 1996 (the Act) does not prohibit all restrictions on resale, but only limits unreasonable or discriminatory restrictions. GTE's witnesses testified that GTE will not offer the service if aggregation is allowed.

OPC argues that GTE has wrongfully classified ERP as a local service. OPC states that ERP should be correctly classified as a toll service and as such should be made available for resale to IXC's, CLEC's, and to GTE's secondary carriers' (SC's) customers.

Staff states in its brief that it agrees with Sprint's witness, David E. Stahly, that allowing IXC's to resell ERP, would alleviate some of the anticompetitive aspects of ERP. Sprint also argues that it is the availability of resale that eliminates the need for imputation.

Staff also agrees that ERP should be available for resale without being "bundled" with basic local service. GTE's witness, Mr. Chopp, stated during cross-examination that it would not be practical for a facilities-based CLEC to resell GTE's basic local service.

Staff, COMPTEL-Mo, and MMG argue that in accordance with Section 251(b)(1) of the Act, GTE should make ERP available to both CLEC's and IXC's at a wholesale rate.

MCI argues that the service should be available to both IXC's and CLEC's at a discounted rate as provided for in the AT&T/GTE Arbitration.

In addition to the other arguments, the STCG states that this service must be made available to both IXC's and CLEC's in order to be in compliance with the Commission's order in Case No. TT-98-351.

7. Does Extended Reach, as proposed, violate the dialing parity requirement?

Staff argues that approval of ERP with the 7- or 10-digit dialing pattern may violate the dialing pattern requirement and “frustrate the purpose of intraLATA presubscription.” Dr. Childers also testified that ERP’s dialing pattern may create additional barriers to entry for CLECs. Staff argues in its reply brief that the dialing parity issue is only a by-product of the larger problem, that GTE has incorrectly classified this service as local rather than toll.

GTE’s witness, Mr. Chopp, testified that CLECs can offer a similar service with the same 7- or 10-digit dialing pattern using either their own switch or through unbundled network elements purchased from GTE. In addition, GTE argues this proposal does not violate the dialing parity requirement because other telecommunications companies may resell ERP and provide the same dialing pattern to their customers.

Sprint and MMG argue that GTE must provide dialing parity in order to be in compliance with Section 251(b)(3) of the Act, which requires a local exchange carrier “to provide dialing parity to competing providers of telephone exchange service and telephone toll service.” Sprint argues in its reply brief that the dialing parity requirement is not satisfied when a CLEC must purchase basic local service from GTE in order to obtain the dialing parity.

MCI argues that it believes dialing parity is important in order to allow effective competition.

8. Will ERP affect payments from Missouri Universal Service Fund?

GTE argues that this issue should be addressed in the Missouri Universal Service Fund (MoUSF) docket and not as part of this case. GTE argues that the MoUSF issue is being taken up in a separate case and the parties should not speculate at this point as to the outcome of that case. GTE’s witness, Mr. Chopp, testified at the hearing that GTE did not intend for ERP to be subject to support from the MoUSF.

Staff and MMG argue that because of the uncertainty of how the federal and state Universal Service Funds will be administered, the classification of this service as local could effect the size of the MoUSF. Dr. Childers testified that because Staff believes that ERP is a toll service, the reclassification of toll to a local service could cause GTE’s entire in-state network to be classified as local for MoUSF recovery purposes.

The STCG argues that the statutes require the MoUSF provide assistance where the cost of “essential local telecommunications service” is more than the “just, reasonable, and affordable rate” as determined by the Commission. STCG further states in its brief that the Commission has defined “essential local telecommunications service” and that even if ERP is classified as a local service, it would not meet the definition of essential local telecommunications service. OPC also argues that

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because this service is optional, it does not meet the definition of essential local services.

GTE's witness, Mr. Chopp, testified that basic local service receives a subsidy from intraLATA toll services and from switched access charges. Mr. Graham testified that GTE would expect to lose some switched access revenue and some intraLATA toll revenue if ERP is introduced. However, Mr. Graham also testified that neither of those revenue reductions was considered in GTE's cost study for ERP.

COMPTEL-Mo makes the argument that although GTE's witness states that it will not ask for MoUSF reimbursement for shortfalls in revenue caused by ERP, there is no way to determine how reimbursement for basic local service might be affected because GTE failed to take into account how ERP would impact the revenue support given to basic local service from intraLATA toll revenue and access revenue.

COMPTEL-Mo, Sprint, and MCI urged the Commission in its brief, to order that GTE may not draw funds from the MoUSF as a result of offering and providing ERP.

9. Should GTE reduce access charges to the TSLRIC cost?

MCI, AT&T, and Sprint argue that reducing access charges would help minimize the anti-competitive aspects of the proposed service. However, GTE argues that the issue of reducing access rates is not an appropriate one for discussion in the context of this case. GTE states in its brief that the reduction of access charges should be decided in a rate rebalancing, the USF docket, or an access reform docket. OPC agrees that the issue is beyond the scope of the tariff.

10. Will the benefits to customers of Extended Reach outweigh the costs?

GTE argues that ERP will bring a significant benefit to customers which subscribe to the service. OPC's witness, Ms. Meisenheimer testified during cross-examination that customers desire expanded local calling scopes and generally prefer flat-rated or block-of-time plans because of the security in knowing how much they will be billed each month. Ms. Meisenheimer also testified that ERP may replace COS for some customers. In addition, GTE argues that this service will offer business customers the ability to expand their business and provide better service to their customers.

Mr. Chopp testified on behalf of GTE that of GTE's 208 Missouri exchanges, customers in 162 of those exchanges cannot call to their county seat without making a toll call. Mr. Chopp testified that it would be of benefit to customers in those exchanges to be able to make local calls to school districts and shopping areas without incurring a toll charge.

OPC argues that even though this service may replace COS for some it should not be approved unless available for resale to IXC's and to the customers of GTE's

secondary carriers. Ms. Meisenheimer states that if a service destroys competition the customers do not gain any true benefits.

MMG argues that ERP should be classified as a toll service and should be made available to GTE's secondary carriers' customers as long as the Primary Toll Carrier (PTC) plan is in place. Otherwise, MMG argues, GTE's offer is discriminatory because the ERP will not be offered to all of GTE's toll customers.

GTE states in its initial brief that the local dialing pattern of 7- or 10-digit numbers meets the needs and desires of the customer. However, the STCG argues that the record does not support this claim, as GTE witness, Mr. Chopp, testified that GTE had not performed any customer surveys or done any other studies to support that claim.

The problem of "looking over the fence" is another issue that the STCG raises in its brief. Mr. Schoonmaker testified that the small telephone companies lack the economies of scale to offer a similar service and therefore, will not be able to offer similar services to their customers. Mr. Schoonmaker stated that this will lead to greater disparity of services between the small companies and the larger ones such as GTE.

Mr. Chopp testified that if a customer subscribes to ERP, any 1+ dialed intraLATA calls would be blocked from carriers other than GTE. COMPTel-MO argues that the blocking of 1+ intraLATA traffic is an anticompetitive feature of ERP.

MCI argues that the long-run damage to competition by ERP will outweigh any short-term benefits to customers. Staff agrees, stating that ERP "would effectively erect new barriers to entry (e.g. non-standard dialing patterns, and masked charges, bundling of services, certification requirements) into the intraLATA market."¹⁵

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

It is GTE's position that its ERP tariff has many characteristics of local and therefore is appropriately filed in its Local Exchange Tariff. GTE argues that ERP's local characteristics include: 1) flat-rate pricing; 2) local dialing; 3) similar to MCA; 4) provisioned in the switch; and 5) meets customers needs and desires for expanded local calling scopes. GTE also argues that ERP is part of a "total service" offering

¹⁵ Staff's Initial Brief, p. 14.

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and can not be separated from the basic local service elements. Although GTE argues ERP has these local characteristics, it did not present sufficient evidence to support a finding that this service is a local service.

The other parties argue and the evidence suggests that ERP has many characteristics of a toll service. These toll characteristics include: 1) terminating access as the method of intercompany compensation; 2) is a substitute for toll service and is very similar to toll services which GTE already has in place; 3) has a per minute charge after the initial thirty hours; 4) the service is one-way; and 5) calls may originate and terminate at points separated by long distances.

The price structure for this service, as reflected in the tariff, is not strictly a flat rate, but also includes a per minute charge after the initial thirty hours. This per minute addition makes the plan very similar to OCA (a toll plan) rather than the flat-rated (unlimited) expanded calling plans which are considered local (e.g., MCA and EAS). Testimony by Staff's witness indicated that GTE has two other calling plans (i.e., Between Friends and EECP) which are similar to ERP yet have been filed in GTE's toll tariff. The Commission is not inclined to recognize a service as local which charges the customer on a per minute-of-use basis.

GTE argues that ERP should be considered a local service because it meets the needs and desires of its customers for expanded local calling scopes. However, GTE did not conduct any customer surveys or present any other specific evidence which supports this claim. Ms. Meisenheimer testified on behalf of OPC that customers desired these types of services, but that the long-term detriments of this service to competition outweighed any short-term benefits provided.

GTE witnesses testified that it is GTE's position that ERP would only be available for resale at a wholesale discount to CLECs and the CLECs must also purchase GTE's basic local service because the two elements cannot be separated. GTE argues that there are functional obstacles to the resale of ERP apart from the basic local service, but the evidence did not support this argument. The Commission finds that the tariff as written would preclude any effective facilities-based local competition by resale.

Recently, in Case No. TT-98-351 the Commission issued an order rejecting SWBT's Local Plus® tariff. Local Plus® was also a LATA-wide calling plan which was filed in that company's Local Exchange Tariff. In Case No. TT-98-351, the Commission stated that Local Plus® had characteristics of both local and toll services and was more appropriately considered a "hybrid" of the two services. Although ERP and Local Plus® have some similarities, the services proposed are very different. The most important differences are that ERP is not a flat-rated calling plan and that GTE "bundled" this service with its basic local service so that the services' resale potential is severely limited. Because of the "bundling" of this service and the per minute rate, the Commission finds that this service is so similar to GTE's other toll services that it would not be appropriate to call it a hybrid.

The Commission finds that as filed, this tariff must be rejected. Specifically, the Commission finds that ERP is not a local service and should not be filed in the company's Local Exchange Tariff. The Commission in rejecting the tariff need not make specific findings as to each issue raised.

The Commission encourages all telecommunications providers to offer extended calling scope services through the use of their own facilities or by contracting with others. The Commission is aware that the public interest would be served by having extended calling scope services available to all customers. Therefore, the Commission encourages GTE and other telecommunications providers to file expanded calling plans which would provide dialing parity and be available for resale at wholesale rates. Providers can find instruction from those expanded calling plans that the Commission has approved.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction over the operations of, and the rates charged by, GTE Midwest Incorporated pursuant to Chapters 386 and 392 of the Revised Statutes of Missouri 1994. This law also gives the Commission authority to review all tariffs filed with the Commission and to reject or suspend tariffs that fail to comply with state law, Commission rule or order, if they include unjust or unreasonable rates, or are not in the public interest. Sections 386.250 and 392.200, RSMo Supp. 1997.

The burden of proof to show that a proposed tariff is just and reasonable is upon the telecommunications company. Section 386.430. Based upon its findings of fact, the Commission concludes that GTE Midwest Incorporated has not met its burden of proof. Thus, the tariff is rejected and GTE Midwest Incorporated is encouraged to file tariffs in compliance with the Commission's findings above.

The Commission concludes that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory limitations on, the resale of its telecommunications services.

The Commission concludes that pursuant to Section 251(c)(4) of the Telecommunications Act of 1996, local exchange carriers also have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

IT IS THEREFORE ORDERED:

1. That the Staff of the Missouri Public Service Commission is granted leave to file its initial brief out of time.
2. That Sprint Communications L.P. is granted leave to file its Revised Initial Brief.
3. That COMTEL-Mo is granted leave to file its Reply Brief out of time.
4. That the Mid-Missouri Group of local exchange telecommunications companies is granted leave to file its Reply Brief out of time.

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5. That Staff's Motion to Strike Supplemental Testimony is denied.

6. That the proposed tariff submitted by GTE Midwest Incorporated on May 22, 1998, is rejected. The specific tariff sheets which are rejected are:

PSC MO. NO. 1

Section 1:

7th Revised Sheet 2, Cancels 6th Revised Sheet 2

Section 4:

Table of Contents, 2nd Revised Sheet 1, Cancels Table of Contents

1st Revised Sheet 1

Original Sheet 32

Original Sheet 33

Original Sheet 34

Original Sheet 35

7. That any objection not ruled on is overruled and any motion not ruled on is denied.

8. That this Report and Order shall become effective on December 29, 1998.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

**In the Matter of the Assessment Against the Public Utilities in the
State of Missouri for the Expenses of the Commission for the
Fiscal Year Commencing July 1, 1998.***

Case No. OO-99-44

Decided December 17, 1998

Public Utilities §5. Where a number of utilities sought rehearing and a stay after the Commission made its public utility assessments against public utilities provided for by Section 386.370 for the Commission's fiscal year commencing July 1, 1998, because certain amounts had been transferred out of the Public Service Commission Fund and used to fund refunds to taxpayers under the so-called Hancock Amendment, the Commission was without authority to determine whether the transfers in question were lawful, but would recalculate certain assessments and would credit each utility with its proportionate share of the amount transferred as though that amount remained in the fund as an offset against future assessments.

*See pages 88 and 112 for other orders in this case. In addition, see pages 371 and 463, Volume 7, MPSC 3d, for other orders in this case.

APPEARANCES

Paul A. Boudreau, Brydon, Swearngen & England P.C., 312 E. Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102, for The Empire District Electric Company, St. Joseph Light & Power Company, Arkansas Western Gas Company d/b/a Associated Natural Gas Company, Missouri-American Water Company and UtiliCorp United Inc. d/b/a Missouri Public Service.

Robert J. Hack, Missouri Gas Energy, 3420 Broadway, Kansas City, Missouri 64111, for Missouri Gas Energy.

Leo J. Bub, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

James M. Fischer, James M. Fischer, P.C., 101 W. McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Southern Missouri Gas Company, L.P., Atmos Energy Corporation, Fidelity Natural Gas, Inc. and Fidelity Telephone Company.

William H. Koegel, Kansas City Power & Light Company, 1201 Walnut Street, Kansas City, Missouri 64106, for Kansas City Power & Light Company.

Michael C. Pendergast, Laclede Gas Company, 720 Olive Street, Room 1520, St. Louis, Missouri 63101, for Laclede Gas Company.

Jeffrey Keevil, Stewart & Keevil, L.L.C., 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Trigen-Kansas City Energy Corporation.

John Coffman, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

William K. Haas, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Dale Hardy Roberts, Chief

I. Procedural History

On June 29, 1998, the Commission issued its Supplemental Order No. 52, in Case No. 11,110¹ (Order 52). By virtue of this order, the Commission made its public utility assessments against public utilities provided for by section 386.370² for the Commission's fiscal year commencing July 1, 1998. The assessments thus determined were sent to the public utilities regulated by the Commission under letters dated June 30, 1998.

¹The Commission maintains a log of sequentially numbered orders for the assessments. However, for the purpose of the request for rehearing this order was subsequently docketed as: In the matter of the assessment against the public utilities in the State of Missouri for the expenses of the Commission for the fiscal year commencing July 1, 1998. Case No OO-99-44.

²All statutory citations are to RSMo Supp 1997 unless otherwise noted.

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On July 27 a group of public utilities comprised of The Empire District Electric Company, St. Joseph Light & Power Company, Associated Natural Gas Company, Missouri-American Water Company, UtiliCorp United Inc., West Elm Place Sewer Corporation³ and Laclede Gas Company filed an Application for Rehearing and Stay (Application). The Application alleged a number of errors with respect to Order 52, specifically, the manner in which the assessment amount was determined.

On August 5 the Commission issued its Order Regarding Application for Rehearing and Stay. The Commission established Case No. OO-99-44 and granted a rehearing to address the issues raised by the Application.

By separate orders dated September 1 and September 23 the Commission granted the Applications to Intervene of Southwestern Bell Telephone Company, Kansas City Power & Light Company, Missouri Gas Energy, Southern Missouri Gas Company, L.P., Atmos Energy Corporation, Fidelity Natural Gas, Inc., Fidelity Telephone Company and Trigen-Kansas City Energy Corporation.

On October 6 the parties filed a Stipulation of Facts in lieu of an evidentiary hearing and a Statement of Issues Presented. The Stipulation of Facts consisted of fifty-one (51) numbered paragraphs and eight (8) attachments thereto (Exhibits A-H). The Statement of Issues Presented is comprised of four (4) separately stated issues. Also on October 6 the parties filed their separate Memoranda of Law addressing the issues which had been identified by the parties themselves as well as the issues identified by the Commission.

The Commission convened a hearing for the purpose of oral argument on October 14, 1998. Post-hearing briefs were filed on or before November 2.

II. Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has considered the positions and arguments of all of the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

The Commission has made certain findings with regard to the individual parties and intervenors. These companies are "public utilities" as that term is defined at section 386.020(42), and each is subject to the jurisdiction and supervision of the Commission as provided by law. In addition to those regulated entities The Office of the Public Counsel (Public Counsel) and the staff of the Missouri Public Service Commission (Staff) also participated as parties.

³West Elm Place Corporation withdrew as a party participant on September 25, 1998.

The Missouri Public Service Commission is an executive agency of the State of Missouri within the Department of Economic Development and, among other things, is charged by law with regulating the rates and terms and conditions of service of electric, gas, heating, water, sewer and telecommunications corporations as provided in Chapters 386, 392 and 393, as amended.

The Commission's primary source of funding for payment of expenses incurred by it and attributable to the regulation of public utilities are assessments against public utilities rendered by the Commission on or before the first of July of each year. Generally, and as more specifically provided in section 386.370, the Commission is authorized to estimate the amount of such expenses to be incurred by it in the coming fiscal year which are directly attributable to groups of public utilities, as well as the amount of these expenses which are not directly attributable to any such group, and then to allocate said expenses to each group (i.e., electric, gas, heating, water, sewer and telecommunications corporations. The amount so allocated is then assessed against the public utilities in each group in proportion to their respective gross intrastate operating revenues. In addition to public utility assessments, the Commission receives some small degree of funding from the federal Department of Transportation in connection with the administration of gas safety requirements.

The public utility assessments are prepared by the Commission's Internal Accounting Department (Staff) and approved by the Commission. Public utilities are required to pay the amounts assessed against them, when due, to the Missouri Director of Revenue who, in turn, remits the payments to the Missouri State Treasurer. The payments are deposited by the Missouri State Treasurer and credited to the Public Service Commission Fund (Fund). The Fund is a special fund within the State Treasury devoted solely and specifically to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities. See, §§386.480.4 and 33.571.

The moneys collected as a result of the Commission's public utility assessments are appropriated out of the Fund by the Missouri General Assembly. Any amount remaining in the Fund at the end of any fiscal year may not, by statute, revert to the State's General Revenue Fund. Rather, those remaining funds are applied by the Missouri General Assembly to the payment of the Commission's expenditures in the succeeding fiscal year. Any remaining funds are applied by the Commission to the reduction of the amount assessed against public utilities in the following fiscal year. The Commission receives no appropriations out of the State's General Revenue Fund in connection with its regulation of public utilities.

In 1996, the 88th General Assembly passed into law Conference Committee Substitute for House Bill No. 1004 (HB 1004-88). HB 1004-88 directed that certain amounts chargeable to specific State funds "as are necessary for disbursements required by Article X, Section 18(b), Constitution of Missouri" be transferred out of

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the State Treasury to the General Revenue Fund (General Revenue). The amount specified by HB 1004-88 to be transferred out of the Fund to General Revenue was \$262,347. HB 1004-88 was signed into law by the Governor on June 13, 1996.

In 1997, the 89th General Assembly passed into law Conference Committee Substitute for House Bill No. 4 (HB 4-89). HB 4-89 directed that the aggregate sum of \$42,284,895 "as are necessary for disbursements required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenue. HB 4-89 did not direct that any specific dollar amount be transferred out of the Fund to General Revenue. HB 4-89 was signed into law by the Governor on June 27, 1997. On or about February 26, 1998, a representative of the Office of Administration notified fiscal officers of affected State agencies of the amounts to be transferred out of each State fund in order to carry out HB 4-89's Article X transfer directive. Said notification provided a spreadsheet showing the proportional share of the transfer for each affected State fund, including the Fund. The amount specified to be transferred out of the Fund to General Revenue pursuant to HB 4-89 was \$425,871.

On June 17, 1998, the \$262,347 attributable to fiscal year 1995 was transferred out of the Fund to General Revenue. On June 22, 1998, the \$425,871 attributable to fiscal year 1996 was transferred out of the Fund to General Revenue. The total transferred out of the Fund attributable to fiscal years 1995 and 1996 was \$688,218. This amount (\$688,218) has been used by the Missouri State Treasurer to make disbursements of excess state revenues to the income taxpayers of the State relating to tax years 1995 and 1996 in accordance with the provisions of the Missouri Constitution Article X, §§16-24 (Article X). See Mo. Const., Art. X, §§16-24.

In 1998, the 89th General Assembly passed Conference Committee Substitute for House Bill No. 1004 (HB 1004-89). HB 1004-89 directed that certain amounts chargeable to enumerated State funds "as are necessary for disbursements required by Article X, Section 18(b), Constitution of Missouri" be transferred out of the State Treasury to General Revenue. The transfer specified by HB 1004-89 to be made from the Fund to General Revenue was \$534,114. HB 1004-89 was signed into law by the Governor on June 19, 1998. The transfer specified by HB 1004-89 to be made from the Fund to General Revenue is anticipated to take place during fiscal year 1999. This amount (\$534,114) will be used by the Missouri State Treasurer to make state revenue disbursements to the income taxpayers of the State relating to tax year 1997. HB 1004-88, HB 4-89 and HB 1004-89 were appropriations bills.

On June 29, 1998, the Commission issued its Order 52 in its Case No. 11,110. The purpose of Order 52 was to estimate, in accordance with the provisions of section 386.370, the expenses to be incurred by the Commission during its 1999 fiscal year commencing July 1, 1998, and reasonably attributable to the regulation of public

utilities (the assessment). The process of calculating the assessment requires Staff to determine assessments for each public utility regulated by it within each group. Order 52 was sent to each affected public utility under cover of letter of the Commission's Executive Director dated June 30, 1998, which set forth the specific amount(s) assessed against each public utility.

The Commission's "Estimated Cash Balance June 30, 1998" filed as an attachment to Order 52 includes as a deduction to the cash "carry-over" calculation a transfer of \$688,218 for Article X. The Commission's Calculation of PSC Assessment filed as an attachment to Order 52 includes in the calculation of the Commission's fiscal year 1999 assessment a cost of \$534,114 attributable to Article X transfer.

III. Conclusions of Law

This case has been submitted on stipulated facts, pursuant to section 536.060, and Commission rule 4 CSR 240-2.130(9). Based upon the findings in this order and the facts as agreed to by the parties and contained in the parties' Stipulation of Facts, the Commission makes the following conclusions of law.

Although the Commission agreed to review the Motion for Rehearing it must be noted that agency adjudicative power extends only to the ascertainment of facts and the application of existing law in order to resolve issues within the given area of agency expertise. In re City of Kinloch, 242 S.W.2d 59, 63 (1951). "[A]n administrative body or even a quasi-judicial body is not and cannot be a court in a Constitutional sense." Id. The judicial power of the State is vested only in the courts designated in Mo. Const. Art. V, Sec. 1. The Public Service Commission has no power to declare any principle of law or equity. Lightfoot v. City of Springfield, 236 S.W.2d 348, 352 (1951). Therefore, the PSC has no power to declare statutes unconstitutional. State ex rel. Missouri Southern Railroad v. Public Service Commission, 168 S.W.2d 1156, 1164 (banc 1914). The PSC may hear evidence from a party regarding the constitutionality of the statute but only for the purposes of creating a record for the issue to be resolved judicially. Missouri Bluffs Golf Venture v. St. Charles County Board of Equalization, 943 S.W.2d 752, 755 (Mo. App. Ct. 1997).

Because Missouri common law states that an administrative agency, such as the Missouri Public Service Commission, has no jurisdiction to determine the constitutionality of a statute, it seems equally apparent that the Commission lacks the jurisdiction to rule on the constitutionality of an Executive Order such as the directive issued by the Missouri Office of Administration to transfer moneys out of the Fund and into the General Revenue. Based upon a review of the common law of Missouri the Commission concluded that it would convene a hearing but that the scope of any such hearing would be for the limited purpose of developing the record for the primary issue(s) to be resolved judicially.

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A plain reading of section 386.370 reveals that the moneys paid into the Fund shall be devoted solely to the payment of expenditures actually incurred by the Commission and attributable to the regulation of public utilities. As such, they are in the nature of a charge for a service rendered or privilege granted and they are not intended for the purpose of raising revenue. The Courts may be guided by the fact that the Commission by virtue of its statutory power imposes public utility assessments. The Commission is not a political subdivision and has no taxing power. Rather, the Commission is an executive state agency of the State of Missouri within the Department of Economic Development and is charged by law with regulating the rates and terms and conditions of the service of public utilities as provided in Chapters 386, 392 and 393.

The Commission finds that two separate events have occurred or are in progress. The first event, which has transpired, transferred \$688,218 out of the Fund balance in June 1998. The Commission concludes that this event was lawful in that it was directed by the Missouri General Assembly pursuant to HB 1004-88 (1996) and HB 4-89 (1997) which were signed into law by the Governor.

The second event is the prospective transfer of \$534,114 from the Fund. Its effect on the Fund will not be evident until the end of fiscal year 1999 when the Fund balance is computed. Nevertheless, the prospective transfer was directed by the Missouri General Assembly pursuant to HB 1004-89 (1998) and was signed into law by the Governor. Therefore, the Commission finds that the prospective transfer is lawful.

The Article X transfers from the Fund for fiscal years 1995 and 1996 were not included in the calculation of assessments against public utilities. The calculation of assessments for fiscal year 1999 was based upon expenses to be incurred that are reasonably attributable to the regulation of public utilities, plus the Article X transfer for the fiscal year 1997, less the balance remaining in the Fund at the end of fiscal year 1998.

The Commission concludes that its assessments for fiscal year 1999, as determined in its Order 52 in Case No. 11.110 were incorrectly calculated to the extent that they included an amount of \$534,114, attributable to Article X transfers for fiscal year 1997. The Commission cannot conclude that this Article X transfer represents an expense to be incurred that is reasonably attributable to the regulation of public utilities. Accordingly, Staff will be directed to delete the amount of \$534,114 and recalculate the public utility assessments for fiscal year 1999.

With respect to the five-year averaging which was inserted into the assessment process by the Staff, the Commission recognizes Staff's effort to smooth the yearly fluctuations created in the annual assessment process. However, the Commission concludes that the process produced an unreasonable result for some utilities. Therefore, the Commission shall direct Staff to recalculate the assessments without the use of the five-year averaging process.

IV. ORDERED PARAGRAPHS***IT IS THEREFORE ORDERED:***

1. That the Commission's Staff recalculate the Public Utility Assessments for fiscal year 1999 omitting from the calculation the five-year averaging process and the amount of \$534,114 identified in the order as Article X Transfer.
2. That all public utilities regulated by the Commission which received assessments for fiscal year 1999 shall receive revised assessments and, further, that each public utility so assessed shall receive an appropriate refund, credit or adjustment for any amount(s) overpaid or underpaid.
3. That all other requests of the parties are denied.
4. That all objections not previously ruled upon are over-ruled and all motions not previously ruled upon are denied.
5. That this Report and Order shall become effective on January 16, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer and Drainer, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Roberts, Chief Regulatory Law

**In the Matter of AT&T Communications of the Southwest, Inc.'s
Petition for Second Compulsory Arbitration Pursuant to Section
252(b) of the Telecommunications Act of 1996 to Establish an
Interconnection Agreement with Southwestern Bell Telephone
Company.***

*Case No. TO-98-115
Decided December 30, 1998*

*Ordered 3 of this Report and Order contains changes approved by the Commission in an order issued on January 8, 1999. On March 5, 2001, the Commission issued an order which stated that on February 15, 2001, in Case No. TO-2001-438, the Commission issued an Order Establishing Case and Directing Notice, noting that certain areas of pricing, including the terms and conditions of those prices, need further review. Case No. TO-2001-438 will address, among other things, the recurring and nonrecurring rates found in the Commission's December 23, 1997 Report and Order in Case No. TO-98-115. Therefore, Case No. TO-98-115 may be closed. In addition, see pages 54 and 252, Volume 7, MPSC 3d for other orders in this case. On December 4, 1997, this case was appealed to Federal Court of Appeals-Western District of Missouri (97-1573-CV-W-4-5). On September 30, 1999, this case was appealed to the 8th Circuit Court of Appeals (99-3833). On May 8, 2001, this case was appealed to the United States Supreme Court (00-1689).

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Telecommunications § 7. 47 U.S.C. § 151 et seq. establishes jurisdiction in the Commission to arbitrate disputes between interconnecting local exchange carriers.

Telecommunications §§ 24, 36. The Commission denied Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record, noting that the parties were afforded an equal opportunity to respond to the Arbitration Advisory Staff Report. Each party was allowed to file comments on the proposed rates and on the costing model, and to support its position with affidavits and schedules. The Commission also held a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the Arbitration Advisory Staff, and the Office of the Public Counsel.

**ORDER DENYING MOTION TO STRIKE,
DENYING MOTION TO SUPPLEMENT THE RECORD,
AND ESTABLISHING BRIEFING SCHEDULE**

The Missouri Public Service Commission issued, on July 24, 1998, an Order Establishing Procedural Schedule for Setting Permanent Rates, which established an evidentiary hearing date of September 4, 1998. This order noted that the Arbitration Order, issued December 23, 1997, specified that the parties would have an opportunity to file comments on the rates and the costing model proposed by the Arbitration Advisory Staff (AAS) and to support their positions with affidavits and schedules. The Commission also indicated that it would hold a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the AAS and the Office of the Public Counsel (OPC). The Order noted that there would be no opportunity for cross-examination by the parties, but that the parties would be permitted to file briefs following the hearing.

At the hearing on September 4, Southwestern Bell Telephone Company (SWBT) offered a Motion to Strike and in the Alternative to Supplement the Record. SWBT indicates that it understood that the parties were to confine their presentations to only the cost being determined in this matter and were not to retry global cost issues addressed by the initial report of the AAS. According to SWBT, AT&T now seeks to retry issues previously resolved by the Commission instead of addressing the particular issues raised by the AAS Report. SWBT states that although it believes the Commission erroneously decided many issues in the prior arbitration orders, it did not re-raise those issues because to the extent they have been appealed, they are no longer within the Commission's jurisdiction.

SWBT details four issues raised by AT&T which SWBT believes were previously decided and should not be retried at this time. SWBT indicates that these issues pertain to SWBT's overall cost study practices, labor rates and maintenance factors, common costs, and utilization factors. SWBT also states that if it has misinterpreted the Commission's intent and that matters previously raised and decided in the prior arbitration phases are "fair game," that it requests the opportunity to respond to AT&T's issues, and to raise its objections to the "global modifications" previously imposed by the Commission. However, if SWBT is correct and AT&T has gone

beyond the intended scope, SWBT believes AT&T's testimony on previously decided issues must be stricken.

On September 14, 1998, AT&T filed its Reply to Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record. AT&T notes that the AAS Report is not SWBT's testimony and that the Commission's procedure in this arbitration permits each party to respond to what the AAS has concluded in its report; the procedure does not entitle SWBT to a further response. AT&T requests that the Commission deny SWBT's motion to strike in its entirety. AT&T also requests, with the exception of allowing the complete direct testimony of Dr. Dale Lehman in Kansas Docket Number 97-SCCC-149-GIT to be entered into the record as requested by SWBT and conditionally agreed to by AT&T at the hearing, that the Commission deny SWBT's motion to supplement the record and to cross-examine Mr. Flappan on these issues. AT&T alleges that SWBT's motion to supplement the record exceeds the scope of the procedural schedule prescribed in the Commission's July 24 order in this case.

SWBT filed its Response to AT&T's Reply to Motion to Strike on September 22, 1998. SWBT's response argues that the only issue before the Commission at this time is SWBT's motion to strike portions of the testimonies of Mr. Rhinehart as being "beyond the scope of the proceeding" and Mr. Flappan as being "irrelevant and without a proper foundation." SWBT states that AT&T's response attempts to introduce new information regarding Mr. Flappan's qualifications which cannot now be cross-examined, and SWBT reiterates its argument that Mr. Flappan is not qualified as an expert witness on SWBT Operational Support Systems (OSSs).

On December 9, 1998, SWBT filed a Motion to Establish Briefing Schedule, requesting that the Commission establish the following briefing schedule:

Simultaneous Initial Briefs—January 6, 1999

Simultaneous Reply Briefs—January 25, 1999

AT&T filed a Response to Southwestern Bell Telephone Company's Motion to Establish Briefing Schedule on December 18, 1998. AT&T requested that the Commission deny SWBT's motion and instead schedule initial briefs to be due thirty (30) days after the Commission issues an order regarding SWBT's Motion to Strike, as previously proposed. On December 24, 1998, SWBT filed a reply to AT&T's comments, in which it urges the Commission to issue an order setting an expeditious briefing schedule.

The Commission has reviewed SWBT's Motion to Strike and in the Alternative to Supplement the Record, AT&T's reply, SWBT's response to AT&T's reply, the December 23, 1997, Report and Order, the Order Establishing Procedural Schedule issued July 24, 1998, SWBT's Motion to Establish Briefing Schedule, AT&T's response and SWBT's reply, along with the other pleadings and orders in this case. The procedure set by the Commission in the December 23, 1997, Report and Order allowed each party to file comments on the rates and the costing model proposed by the AAS and to support its position with affidavits and schedules. This order

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indicated that the Commission would then hold a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the AAS and OPC. The order specified that there would be no opportunity for cross-examination by the parties, but that the Commission would permit the filing of briefs following the hearing. The parties have been afforded an equal opportunity to respond to the AAS report. In making its final determination in this case, the Commission will give all the evidence presented the weight it is due. The Commission finds that the Motion to Strike and in the Alternative to Supplement the Record should be denied. The Commission also finds that deadlines should now be established for the filing of briefs.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record is denied.
2. That simultaneous initial briefs shall be due on February 1, 1999.
3. That simultaneous reply briefs shall be due on February 16, 1999.
4. That this order shall become effective on January 12, 1999.

Lumpe, Ch., Drainer and Murray, CC., concur.
Schemenauer, C., not participating. Crumpton, C., absent.

Ruth, Regulatory Law Judge

**In the Matter of the Investigation of GTE Midwest Incorporated's
Proposed Sale or Exchange of 105 Exchanges in the State of
Missouri.***

Case No. TO-99-262
Decided January 21, 1999

Evidence, Practice & Procedure§25. Where Public Counsel applied to the Commission to open a docket within which to consider GTE Midwest, Inc.'s alleged intention to sell or exchange certain of its Missouri exchanges, the Commission's procedural rules required dismissal of the application because it did not cite any statutory authority for the relief sought by Public Counsel.

ORDER DENYING APPLICATION AND CLOSING CASE

Pleading requirements for the Commission require that all applications include, *inter alia*, a "[r]eference to the statutory provision or other authority under which relief is requested;" 4 CSR 240-2.060(1)(D). On December 9, 1998, the

*The Commission, in an order issued on February 17, 1999, denied a rehearing in this case.

Office of the Public Counsel (Public Counsel) filed an application which it entitled “Office Of The Public Counsel’s Motion To Open A Docket To Investigate And Hold Public Hearings Regarding GTE Midwest’s Proposed Sale Or Exchange Of 105 Exchanges In The State Of Missouri” (Application). However, Public Counsel cites no authority for the proposition that the Commission may review an application which has not yet been filed by the applicant.

Public Counsel does cite the fact that on or about November 5, 1998, GTE Midwest, Inc. (GTE) announced that it was offering approximately 105 of its Missouri exchanges for sale. Public Counsel notes that portion of GTE’s press release which made comments to the effect that this proposed sale is an independent action without regard to any transactions, such as mergers, in which GTE may be involved. Public Counsel goes on to assert that the proposed divestiture of these exchanges raises significant questions and concerns about the quality of service afforded the customers in the areas which may be affected by any such sale. Public Counsel requested that GTE be required to provide information as to how service will be affected, and further requested that public hearings be held for the purpose of determining the impact which any future sale may have on current GTE customers and the potentially affected communities.

On December 18 GTE filed its Response¹ to Public Counsel’s Application. GTE has argued that Public Counsel’s Application is not ripe. GTE has specifically noted that it has “merely announced its intention to sell” GTE has asked the Commission to dismiss Public Counsel’s Application.

Public Counsel has cited numerous statutory sections, many of which would apply if GTE were ever to file an application for permission and authority to sell or otherwise transfer any of its Missouri holdings. Until GTE makes such an application, these statutes do not apply. Public Counsel’s motion is not ripe. Ripeness of an issue must exist for the proper exercise of a quasijudicial function and in the case *sub judice* GTE has filed no such issue for the Commission’s consideration. Simply stated, Public Counsel is asking the Commission to rule upon a contingency which might occur at some future date.

Until GTE asks the Commission for permission to buy, sell or trade, there are no facts in dispute; indeed, there are not any facts in existence. In order for due process to apply, there must be some fact in dispute. *Weinberger v. Hynson Westcott & Dunning*, 412 U.S. 609, 93 S.Ct. 2469, 37 L.Ed.2d 207 (1973).

¹ GTE’s Response was more fully entitled “Memorandum Of GTE Midwest Incorporated In Opposition To Office Of The Public Counsel’s Motion To Open Docket To Investigate And Hold Public Hearings Regarding The Proposed Repositioning Of 105 Exchanges In Missouri.”

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Public Counsel has failed to state a claim upon which relief can be granted. It would not be in the interest of judicial economy for the Commission to proceed with this matter. It would consume resources of the Commission, the Public Counsel, GTE and any potential intervenor to investigate a speculative, and as yet nonexistent, transaction. Therefore, the Commission will dismiss Public Counsel's Application and close this case.

If GTE proposes to consummate a sale or trade regarding any of its Missouri properties, it will be required to secure authority and permission from the Commission prior to completing any such transaction. At that time Public Counsel may again file its suggestions contained in Public Counsel's Application and the Commission will follow its standard procedure for investigating proposed sales of utility properties.

IT IS THEREFORE ORDERED:

1. That the Application filed by the Office of the Public Counsel on December 9, 1998, and entitled "Office Of The Public Counsel's Motion To Open A Docket To Investigate And Hold Public Hearings Regarding GTE Midwest's Proposed Sale Or Exchange Of 105 Exchanges In The State Of Missouri" is hereby denied.

2. That this order shall become effective on February 2, 1999.

3. That this case may be closed on February 3, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC.,
concur.

Roberts, Chief Regulatory Law Judge

**In the Matter of the Investigation into the Exhaustion of Central
Office Codes in the 314 Numbering Plan Area.***

Case No. TO-98-212

Decided January 26, 1999

Telecommunications §§1, 4. Evidence, Practice and Procedure §24. The Commission denied SWBT's application for rehearing because the Commission anticipates that the area codes involved in the split will not exhaust until after the middle of the next decade and, is, therefore, in compliance with the Industry Numbering Committee's guidelines.

Telecommunications §§1, 8. Evidence, Practice and Procedure §29. Public Counsel's motion to compel was denied because the Commission denied SWBT's application for rehearing, and when the North American Numbering Council recommended that the Federal Communications Commission, Common Carriers Bureau, direct the North American Numbering Plan Administrator to issue a new area code, the underlying issue became moot.

*See page 82 for another order in this case.

Telecommunications §§1, 8. The Commission approved the proposed area code relief implementation plan and directed the Technical Committee to take all actions as proposed by the implementation plan, submitting dates for permissive and mandatory dialing and an education plan to the Commission for review.

ORDER DENYING APPLICATION FOR REHEARING, APPROVING IMPLEMENTATION PLAN AND DIRECTING FURTHER FILINGS

The Commission issued its Report and Order on July 22, 1998, requiring the Technical Committee (Committee) to implement the two-way geographic split proposed by the Office of the Public Counsel (OPC). The Committee was ordered to request a Numbering Plan Area (NPA) code, or "area code," from the North American Numbering Plan Administrator (the NANPA) for the area designated as the "new" NPA in the Commission's Report and Order. The Committee was further ordered to submit a proposed plan for implementing the geographic split.

On August 3, Southwestern Bell Telephone Company (SWBT) filed an application for rehearing of the Commission's order. SWBT alleged that the two-way geographic split adopted by the Commission would result in an exhaust of the revised, smaller 314 NPA by 2002 and an exhaust of the new NPA by 2009. SWBT urged the Commission to approve an overlay rather than a geographic split as SWBT and several other parties had originally proposed. SWBT pointed out that its witness had testified that, without number conservation measures, the remaining 314 NPA could exhaust as early as the year 2002, and the new NPA could exhaust as early as the year 2009. SWBT argued that Sections 5.0(f) and 5.0(h) of the Code Relief Planning and Notification Guidelines, Industry Numbering Committee (issued April 4, 1997) (1st NPA Guidelines) provide that a plan must provide no less than five years of relief and the periods of relief in the split areas must not differ by more than 15 years.

The Committee filed its proposed implementation plan for the Commission approved geographic split on August 5. In its plan, the Committee proposed dates of September 1 and October 1 for filing additional particulars of its customer education and technical implementation plans. Moreover, the Committee informed the Commission that a representative of SWBT had sent a letter to the NANPA to request a new area code, and that the Committee would inform the Commission about the NANPA's response upon receipt.

On August 6, SWBT filed a letter with the Commission, attaching a copy of the NANPA's response¹. SWBT did not attach a copy of its letter to the NANPA

¹The response, addressed to William Adair (of SWBT) from Rose Breidenbaugh (of the NANPA), was not signed. SWBT explained in its cover letter that the correspondence was delivered by electronic mail and that SWBT would provide a hard copy to the Commission upon receipt of a hard copy from the NANPA. SWBT has not filed a hard copy to date.

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requesting the new NPA. In its response, the NANPA stated that it had reviewed the request and that it would recommend to the North American Numbering Council (the NANC) that no new NPA be assigned. The NANPA stated in its letter that the projected exhaust dates of the year 2012 for the remaining 314 NPA and the year 2045 for the new NPA were more than 15 years apart and would therefore violate the NPA Allocation Plan and Assignment Guidelines (Industry Numbering Committee document number INC 96-0308-011, issued May 18, 1998, reissued July 13, 1998) (2nd NPA Guidelines). On August 11, 1998, the Commission issued a Notice of Commission Participation in North American Numbering Council Meeting. This notice was later rescinded on August 13.

OPC filed suggestions regarding the correspondence from the NANPA, and a response to SWBT's application for rehearing, on August 12. In its suggestions, OPC stated that the guidelines do not supersede the authority that the Federal Communications Commission (FCC) has given to state commissions to determine the type and method of NPA relief. According to OPC, the guidelines do not have the force and effect of law. In its response to SWBT's application for rehearing, OPC urged the Commission to deny the application for the same reasons that it originally rejected SWBT's proposed overlay. OPC stated that SWBT had not raised any new arguments, and pointed out that SWBT had raised the issue of the Industry Numbering Committee's guidelines at a very late date in the proceedings.

On August 13, GTE Midwest Incorporated (GTE) filed a response to SWBT's application for rehearing. GTE supported SWBT's application and cited many of the same reasons cited by SWBT. GTE further pointed out that the response of the NANPA would make implementation of a geographic split in the near future difficult, and that the life of the remaining 314 NPA will be shortened if implementation is delayed. GTE asserted that customer impacts from a geographic split would be more negative than customer impacts from an overlay, and that the Texas Commission has recently ordered implementation of a retroactive overlay in two NPAs (the 214 and 972 NPAs) that were previously created by a split ordered by the Texas Commission.

On August 18, notice was issued by the Commission that the Commission had determined that its Chair and Regulatory Law Judge would participate in the NANC meeting on August 19 by telephone conference. In its meeting on August 19, the NANC considered the question posed by the NANPA regarding the request for direction regarding the Missouri's NPA area code plan and whether a new area code could be issued because, as NANPA alleged, Missouri's NPA area code plan contradicted the assignment guidelines. OPC filed its Comments Regarding Telephone Conference with North American Numbering Council on August 24.

On August 26, Alan C. Hasselwander, Chairman of the NANC, issued a written recommendation to Kathryn C. Brown, Chief, Common Carrier Bureau, FCC. In essence, NANC recommended that NANPA should be directed to release an NPA code pursuant to Missouri's PSC order and that Missouri's state commission should be asked to pursue all methods of number conservation, review exhaust forecasts and

consider the reconstitution of the 314 NPA rather than requesting a new NPA if the 314 NPA exhausts prematurely. A copy of this NANC's letter to the FCC's Common Carrier Bureau was provided to Chair Sheila Lumpe on August 26 by facsimile transmission.

On August 26, OPC filed eight additional consumer letters received by its office regarding the 314 area code. Five of the consumers were businesses or charitable organizations that favored the overlay plan citing the cost of changing printed materials and signage, one consumer who favored the split plan, one consumer who opposed both plans and made other suggestions including giving wireless phone a separate area code to conserve on 314 numbers, and one consumer was complaining about poor service on a pay phone line in the 417 area code.

On August 27, Staff filed revisions to the Technical Committee's proposed implementation plan indicating that the Technical Committee would not be able to develop dates for implementation until a new NPA was assigned.

On September 4, OPC filed its Motion to Compel requesting the Commission issue an order requiring SBC Communications, Inc. (SBC) and SWBT to answer OPC's Data Requests Nos. 502 and 503. On September 14, SWBT filed its Response to OPC's Motion to Compel. On September 18, OPC filed its reply to SWBT's Response regarding the Motion to Compel. Copies of Data Request Nos. 502 and 503 were attached to OPC's motion.

In its Motion, OPC stated that SWBT did respond to its Data Request No. 501 requesting disclosure of all contacts SWBT had with NANPA from January 1, and August 10, concerning the 314 relief plan without objection. OPC further stated that Data Request No. 502 was issued after the NANC meeting on August 19, 1998, at which time "it became known that, prior to the meeting, SBC sent an electronic message to NANC members (except MCI) concerning the 314 area code relief plan". Data Request No. 502 requested disclosure of contacts between SBC, SWBT, NANC members, and the FCC and its members or staff concerning 314 area code relief. OPC stated that Data Request No. 503 requested the supplementation of Data Request No. 501 (previously answered without objection) to include contacts with NANPA subsequent to August 10, 1998. SWBT objected to Data Request Nos. 502 and 503 on the basis that there is no legitimate purpose for additional discovery because no possibility of rehearing exists. OPC replied that it had concerns that the Commission's legitimate order was not being implemented by a neutral area code administrator. Since the new area code has been issued, the Commission prevailed and the Commission's order is being implemented, requiring SWBT & SBC to answer the data requests is no longer necessary.

On October 29, Staff filed a copy of correspondence received from William Adair, Missouri Code Administrator. In his correspondence, Mr. Adair stated that on October 28, he notified the NANPA that the 314 NPA was being placed in NXX Jeopardy. A meeting was scheduled for November 11, to discuss a specific Jeopardy Rationing Plan.

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On November 25, Staff filed a copy of the correspondence received from Anna Gomez, Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission, requesting that the Missouri Commission request that the FCC direct the NANPA to release a new area code to provide relief for the current 314 Numbering Plan Area pursuant to the Commission's Order. On December 1, the Missouri Public Service Commission issued a letter to the FCC requesting that the FCC direct the NANPA to release a new area code number for the relief for the current 314 NPA.

On December 7, for informational purposes, Staff filed a copy of the correspondence from Bill Adair, Missouri Code Administrator, setting forth the jeopardy rationing plan implemented in the 314 Numbering Plan Area on December 1, 1998.

Findings of Fact

The Commission makes the following findings of fact concerning SWBT's application for rehearing.

Neither SWBT nor GTE have presented any new facts to the Commission for consideration, other than the NANPA's response to the geographic split adopted in the Commission's July 22 Report and Order, and the Texas Commission's recent reversal of its geographic split of the 214 and 972 NPAs. The Commission finds that the Texas Commission's assessment of customer impact has no bearing on the Commission's determination of the customer impacts in the 314 NPA.

The NANPA's response and SWBT's application primarily present the legal question of whether the Industry Numbering Committee's guidelines are binding on the Commission. However, they also rely on the projected exhaustion dates of record in formulating their arguments that the Commission's Report and Order does not comply with the guidelines. The Commission will consider the legal issue below, but will address the factual assumptions underlying SWBT's, and the NANPA's, position in this section.

The NANPA response points out that, if certain assumptions are made concerning the implementation of various conservation methods, then the revised 314 NPA is expected to exhaust in the year 2012, and the new NPA is expected to exhaust in the year 2045. SWBT points out that, if no conservation methods are implemented, then the revised 314 NPA is expected to exhaust in the year 2002, and the new NPA is expected to exhaust in the year 2009. The NANPA and SWBT state that a difference of more than 15 years in the life span of the NPAs will result if conservation measures are imposed throughout both of the NPAs. SWBT further states that, if no conservation measures are imposed, the revised 314 NPA will not have a lifespan of five years or more.

The Commission finds that both the NANPA and SWBT have made faulty assumptions about the solutions that are likely to be imposed by the Commission, and ignored the Commission's findings. The Commission's July 22 Report and Order in this case does not order implementation of any conservation measures. However, the Commission has established a separate case (Case No. TO-99-14) for purposes

of finishing the conservation work undertaken by the Committee in the current 314 NPA. The Commission has determined that, while sequential number assignment and rate center consolidation may be implemented in the near future, 1,000s block number pooling should not be implemented until the Committee has given the Commission further updates on the status of development of national standards. The Commission has also noted that Option 2 rate center consolidation is more complicated than Option 1 rate center consolidation, and Option 3 is more complicated than Option 2. Generally, the difficulties of implementing the six rate center consolidation options discussed in the Committee's January 1998 report increase as the discussion proceeds from Option 1 to Option 6.

The projected exhaust dates of 2012 and 2045 that were developed by OPC assumed that certain conservation measures would be implemented by certain dates. See Exh. 32. Among other things, OPC assumed that landline pooling would begin in the first quarter of 1999, and that wireless pooling would begin in the first quarter of 2000. OPC assumed that the Commission would impose Option 2 rate center consolidation, which would involve consolidating the rate centers in the exchanges that fall within the mandatory metropolitan calling area (MCA). The boundary of the split ordered by the Commission mirrors the boundary between mandatory and optional MCA exchanges.

The Commission's Order Giving Notice and Establishing Deadlines for Filing of Intervention Applications, Procedural Schedule and Final Report, issued on July 22 in Case No. TO-99-14, ordered the parties to file a sequential number assignment report no later than October 22, a rate center consolidation report no later than December 22, and a report on pooling no later than February 22. The sequential number assignment and rate center consolidation reports have been timely filed. It was expected that the first two reports would contain plans for implementing those conservation methods, but the Commission anticipated that the pooling report will not. The rate center consolidation report addresses the questions proposed for all of the seven options, plus one variation. Six options were previously presented by the Committee. The seventh option was suggested by SWBT witness Unruh at the evidentiary hearing.

Based upon the record before it, the Commission has determined that number pooling is not likely to be implemented until well beyond the first quarters of 1999 and 2000. Assuming that number pooling is ultimately implemented, the Commission may choose to introduce pooling in the core areas of St. Louis before introducing pooling in the outlying areas. Thus, the exhaust dates of 2012 and 2045 predicted by OPC are optimistic. Both of the NPAs involved in the split are likely to exhaust prior to that time. In addition, the projected lifespan of the new NPA could be shortened more than the lifespan of the revised 314 NPA if the Commission implemented pooling in the core areas prior to implementation in the outlying areas of St. Louis.

The Commission anticipates that, with the time frame for implementation of number conservation methods that has been established in Case No. TO-99-14 and the possibility that pooling will be implemented in stages, the revised 314 NPA is likely

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to exhaust somewhat sooner than OPC's projected 2012 exhaust date, but not earlier than five years following the implementation of this geographic split. SWBT's projected 2002 exhaust date for the revised 314 NPA is overly pessimistic, given the rigorous schedule established by the Commission for implementing sequential number assignment and rate center consolidation in Case No. TO-99-14.

The Commission anticipates that the new NPA will exhaust significantly sooner than the year 2045, perhaps as early as SWBT's estimated exhaust date of 2009, because 1,000s block number pooling will be implemented later than sequential number assignment and rate center consolidation. OPC's projected exhaust date of 2045 was based largely on implementation of landline pooling by the first quarter of 1999 and wireless pooling by the first quarter of 2000, as OPC did not assume that any rate center consolidation would take place in the new NPA.

Given these facts, the Commission anticipates that both of the NPAs involved in the split will exhaust sometime between the middle of the next decade and the middle or end of the decade that follows. If this occurs, the Industry Numbering Committee's guidelines will not be violated, even if they control the Commission's decision. Therefore, based on the record, the Commission finds that SWBT's application for rehearing should be denied.

As rehearing is being denied, there is no further reason for the Commission to require SBC and SWBT to respond to Data Request Nos. 502 and 503. After the NANC recommended to the FCC that NANPA be directed to issue an area code pursuant to the order of the Missouri Public Service Commission in its correspondence dated August 26, 1998, the issue became moot. Therefore, OPC's Motion to Compel will be denied.

Conclusions of Law

The legal issue presented by SWBT is whether the Industry Numbering Committee's guidelines are rules to which the Commission must adhere, or merely guidelines.

The Industry Numbering Committee (INC) is a committee of the Alliance for Telecommunications Industry Standards (ATIS), which is an organization of telecommunications carriers that develops standards for the telecommunications industry under the aegis of the Carrier Liaison Committee of the NANC. NANC is an advisory body for the FCC. NANC makes its recommendations to the Common Carrier Bureau of the FCC regarding numbering issues. The FCC is the federal agency given plenary jurisdiction over numbering issues pertaining to the United States pursuant to 47 U.S.C. §251 (e)(1), the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). The FCC delegated authority to state commissions to implement area code relief in its docketed case entitled Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order)² However, under the FCC's regulations, 47 C.F.R. §52.9(b), if a state commission acts inconsis-

tently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, a party may dispute the proposed area code plan by filing a petition for declaratory ruling, rulemaking, or other appropriate action with the Common Carrier Board of the FCC.³

Proposed Implementation Plan

The relief implementation plan describes the standard area code relief implementation process that has been developed within the industry over the years. The effort will be led by the NPA Relief Coordinator, Bill Adair, of SWBT. The relief implementation process was successfully used in the Missouri 314/573 and 816/660 splits. The Implementation Team structure proposed is identical to the method used in these previously completed 314/573 split and in the 816/660 split.

Under the relief implementation process, the NPA Relief Coordinator will hold monthly NPA relief implementation meetings for the current 314 NPA split relief effort. These meetings will be held in St. Louis until the permissive dialing period ends. The affected telecommunications providers have already started internal planning.

The relief Implementation Team is divided into three subcommittees: Translations/Network, Public Relations/Customer Education and Operations Support Systems/Billing Systems. Subject matter experts from every industry participant served on each of these subcommittees.

As directed by the Commission, the implementation team addressed nine issues: 1) accomplishing technical changes, 2) obtaining a new NPA code, 3) educating the public, 4) beginning permissive dialing and beginning mandatory dialing for the new NPA, 5) specific date of educational meetings, 6) specific contacts to be made with newspaper, radio and television media, 7) samples of the materials to be distributed to the media, customers, and governmental bodies, 8) inform the Commission of the possibility of obtaining 310, 311, 312, 313, 315, 316, 317, 318, 319 as the new NPA code, and 9) inform the Commission regarding

² Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order) petitions for reconsideration pending, vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. Aug. 22, 1997), cert. granted, sub nom. *AT&T Corp. V. Iowa Util. Bd.*, 118 S.Ct. 879 (Jan. 26, 1998).

³ The FCC delegated authority to the Common Carrier Bureau to act on such petitions. Local Competition Second Report and Order, 11 FCC Rcd at 19520.

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the possibility of dialing eight digits rather than ten digits if one of these 31x codes is assigned. Regarding Issues 8 and 9, the Technical committee indicated in their proposed implementation plan filed August 5 that none of the numbers referred to in Issue 8 are available, and therefore, Issue 8 and 9 are mooted.

In its revisions filed on August 27, Staff informed the Commission that the Technical Committee would be unable to develop proposed dates for implementation until a new NPA code is assigned. Staff proposed that the Technical Committee submit proposed dates for permissive and mandatory dialing within 21 days after the receipt of the new NPA code, and then to submit an education plan 30 days later.

The Commission issued a letter to the FCC on December 1 requesting that the FCC direct the NANC to assign the new NPA number for the 314 NPA. On January 6, 1999, the Commission was notified that the new NPA 636 had been assigned for the 314 split. Therefore, Issue 2 addressed in the implementation plan will not be necessary. The remainder of the implementation plan is approved. The Commission will direct the Technical Committee to submit proposed dates for permissive and mandatory dialing within 21 days after the receipt of the new NPA code, and then to submit an education plan 30 days later as proposed.

IT IS THEREFORE ORDERED:

1. That the application for rehearing filed on August 3, 1998 by Southwestern Bell Telephone Company is denied.
2. That the parties shall comply with the Commission's Report and Order of July 22, 1998.
3. That Southwestern Bell Telephone Company shall file a copy of its first letter to the North American Numbering Plan Administrator regarding the new NPA with the Commission.
4. That the Office of Public Counsel's Motion to Compel filed on September 4, 1998, is denied.
5. That the Technical Committee shall take all actions proposed in the implementation plan filed by the Technical Committee on August 5, 1998, as revised on August 27, 1998, and the Technical Committee shall submit proposed dates for permissive and mandatory dialing by February 4, 1999, and submit an education plan by February 26, 1999.
6. That this order shall become effective on January 26, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer and Drainer, CC., concur.

Register, Regulatory Law Judge

In the Matter of Associated Natural Gas Company's Tariff Revisions to be Reviewed in its 1995-1996 Actual Cost Adjustment.*

Case No. GR-96-227
Decided January 26, 1999

Evidence, practice and procedure §4. The party asserting the positive of a proposition bears the burden of proving that proposition. *Dycus v. Cross*, 869 S.W.2d 745, 749 (Mo banc 1994).
Gas §17.1. The Commission accepted the conclusions of Staff's expert witness and found that the gas utility had previously recovered the cost of gas injected into storage and could not again recover the cost of that gas when it was withdrawn from storage.

APPEARANCES

Gary W. Duffy, Attorney at Law, Brydon, Swearengen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for Associated Natural Gas Company.

Jeffrey L. Dangeau, Attorney at Law, P.O. Box 1408, Fayetteville, Arkansas 72702, for Associated Natural Gas Company.

Cherlyn McGowan, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

Douglas E. Micheel, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 56102, for Office of Public Counsel.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

This case was established to consider Associated Natural Gas Company's (ANG's) Actual Cost Adjustment (ACA) for the year ending October 31, 1996. ANG submitted tariff sheets designed to revise the ACA factors for each of its three Missouri districts. Those tariff sheets were approved on October 30, 1996 on an interim, subject to refund basis. In the same order the Commission directed its Procurement Analysis Department (Staff) to conduct an audit of the ACA period and submit its recommendation by August 1, 1997. Staff conducted the required audit and submitted its recommendation on August 4. Staff recommended several adjustments to ANG's ACA filing. On September 4, ANG filed a response to Staff's recommendations. The only recommendation with which ANG disagreed concerns Staff's proposal to reduce ANG's SEMO District gas costs by \$254,476

*The Commission, in an order issued on March 2, 1999, denied a rehearing in this case.

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to eliminate an alleged double recovery in ANG's 1995-1996 ACA filing of Liquefied Natural Gas (LNG) and Natural Gas Pipeline of America (NGPL), non-S2 storage withdrawal dollars. The double recovery allegedly occurred as a result of ANG's change in ACA recovery methodology with regard to storage injection and withdrawals.

An Order Adopting Procedural Schedule was filed on November 21. Direct Testimony on behalf of Staff and ANG was filed on November 24, Rebuttal testimony was filed on behalf of both parties on January 23, and Surrebuttal testimony was filed on behalf of both parties on March 2.

A hearing was held on April 7. Staff and ANG submitted initial briefs on May 11, and reply briefs on June 1. Although the Office of the Public Counsel entered its appearance at the hearing, it chose not to participate further in the hearing and did not submit post-hearing briefs.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

Evidence Presented

Staff alleges that ANG has double recovered \$254,476 for natural gas withdrawn from LNG and NGPL non-S2 storage between December 1, 1995 and October 31, 1996. Staff proposes to decrease ANG's SEMO District gas costs by that amount when calculating ANG's ACA adjustment.

The ACA adjustment is designed to permit a gas utility to pass along to consumers the actual costs it incurs for purchase of natural gas. For the period in question, ANG included in its actual cost the value of natural gas which it removed from storage in its LNG and NGPL non-S2 storage facilities after December 1, 1995. Prior to December 1, 1995, ANG had employed an "up-front" ACA recovery method under which it passed on to consumers its cost of gas that was injected into LNG and NGPL non-S2 storage at the time the gas was injected into storage. Beginning on December 1, 1995, ANG changed to an "as withdrawn/consumed" recovery method.

Staff agreed with ANG's decision to change its recovery method because ANG already used the "as withdrawn/consumed" method with regard to its other storage accounts and that method is also used by the majority of other Local Distribution Companies in Missouri. However, Staff asserted that ANG should only be allowed to recover under the new "as withdrawn/consumed" method for those gas supplies injected into storage after the changeover date of December 1, 1995. Allowing ANG to recover for the gas supplies injected prior to the change over date would allegedly permit ANG to recover the cost of the previously injected gas both at the time of

injection under the former "up-front" recovery method as well as at the time of withdrawal under the new "as withdrawn/consumed" method.

ANG responded to Staff's position by submitting the Direct Testimony of Mark S. Kidd. Mr. Kidd's testimony asserted that there had been no double recovery. Mr. Kidd testified that the amount of natural gas that ANG has in storage varies greatly over the course of a year. The company purchases extra gas during the warm weather months, when prices and demand are low, and injects it into storage. Then during the cold weather months, when prices and demand are high, the company withdraws some of the gas from storage to meet peak demand and to reduce the price that it would otherwise need to pay for gas on the market at that time. From September 1982, through November 1995, ANG included in its ACA recovery the cost of gas injected into LNG and NGPL non-S2 storage. Beginning December 1, 1995, ANG began including the cost of LNG and NGPL non-S2 withdrawals in its ACA recovery. Kidd testified that ANG was concerned about the possibility of over- or under-recovery at the time it decided to change from an "up-front" recovery method to an "as withdrawn/consumed" method. However, ANG does not agree that any over-recovery has occurred.

ANG argues that in order to prevent an over- or under-recovery, the actual costs recovered by ANG under the old "up-front" recovery method must be compared to the costs that ANG would have recovered under the new "as withdrawn/consumed" method if that method had been in use throughout the period. ANG made such calculations and they show that for the period of September 1982 through November 1995, injections actually recovered totaled \$5,166,804 and withdrawals from storage totaled \$5,174,736. Thus, changing to the "as withdrawn/consumed" recovery method on December 1, 1995 resulted in an under-recovery by ANG in the amount of \$7,932. Put another way, ANG's calculations alleged that it had a beginning inventory of gas in storage on September 1, 1982 of \$835,859. Injections of \$5,166,807 were added to that amount and then withdrawals of \$5,174,739 were subtracted. The result is an ending inventory balance of \$827,927 as of November 30, 1995. The value of ANG's inventory of gas in storage was thus reduced by \$7,932 and ANG has allegedly under-recovered by that amount.

In response to the Direct Testimony of Mark S. Kidd, the Staff filed the rebuttal testimony of Michael J. Wallis. Wallis' testimony argued that prior to July 8, 1982, the date when ANG began recovering its procurement gas costs through the ACA true-up mechanism, ANG had already recovered approximately \$663,000 of Missouri allocated storage withdrawal costs in an up-front fashion¹. Staff argued

¹A portion of the value of ANG's natural gas storage inventory, specifically a portion of the inventory in ANG storage, would be used outside Missouri and would not be allocated to Missouri ratepayers.

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that this up-front recovery had occurred because prior to July 8, 1982, the Purchased Gas Adjustment (PGA) tariffs then in effect would have allowed ANG to recover the cost of gas injected into storage by charging its Missouri customers an estimated PGA rate. That rate was based on the Company's average cost of gas, which was determined by using the most recent supplier invoices without a reduction for gas injected into storage. In support of this argument, Staff attached a copy of Missouri PSC PGA tariff sheet number 44 which served as ANG's PGA clause for the SEMO District for the period of June 2, 1978 to July 8, 1982. Staff asserted that this tariff sheet would have permitted ANG to recover all of the cost of gas injected into storage prior to July 8, 1982.

ANG did not accept Staff's position and submitted the surrebuttal testimony of Mark S. Kidd. In his surrebuttal testimony, Kidd analyzed the operation of tariff sheet 44. Kidd pointed out that tariff sheet 44 does not make any specific mention of the treatment of gas in storage. However, he asserted that tariff sheet 44 provided for recovery of gas costs from customers as consumed rather than recovery as purchased as alleged by Staff. Calculations using similar assumptions in three different scenarios, attached to his testimony as Schedule MSK-9, illustrate Kidd's understanding of the operation of tariff sheet 44.

Kidd's surrebuttal testimony also indicated that ANG had changed its position with regard to the date that the ACA mechanism commenced and its effect on the value of gas in storage on that date. Kidd indicated that his previous calculations had assumed a starting date of September 1, 1982 but that tariff sheet 44 showed that the ACA mechanism would have gone into effect on July 8, 1982 which is the date that tariff sheet 44 was canceled. Using this new date, Kidd contends that a positive adjustment for gas costs of \$19,522 should be ordered by the Commission to compensate ANG for the additional value of gas in storage.

Staff submitted the surrebuttal testimony of Michael J. Wallis. In that testimony, Mr. Wallis again emphasized Staff's contention that ANG had, prior to July 8, 1982, recovered its storage withdrawal costs in an up-front fashion. He testified that ANG accomplished this by charging its Missouri customers an estimated PGA rate which was based on ANG's average cost of gas, determined by using the most recent supplier invoices, including gas supplies injected into storage.

An evidentiary hearing was held on April 7, 1998. At the hearing, Michael Wallis testified on behalf of the Staff and Mark Kidd testified on behalf of ANG. Mr. Kidd reiterated his interpretation of tariff sheet 44 as providing for recovery by ANG of gas costs as the gas was consumed and not as it was injected into storage. Mr. Kidd did agree that supplier invoices from a gas pipeline prior to July 8, 1982 would have included the cost of gas purchased as well as transportation and storage costs in one lump sum cost of gas figure. Mr. Wallis testified that tariff sheet 44 would have included storage costs as part of the invoiced cost that was the basis for establishing

a rate. He stated that it was Staff's position that the value of the gas in storage as of July 8, 1982 was recovered at the time it was purchased by ANG.

Discussion

Burden of Proof

The Missouri Supreme Court has stated that "[t]he law in this state as to the burden of proof is clear and designed to assure that hearings on contested matters provide the parties with predictable rules of procedure. The party asserting the positive of a proposition bears the burden of proving that proposition." *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo. banc 1994). In this case, the Staff is asserting that ANG is double recovering the value of the gas it has in storage. Therefore, according to the rule set out in *Dycus*, the Staff has the burden of proving its assertion.

Section 393.150.2, RSMo (1994), does state that "a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, . . ." In this case, ANG is, in effect, seeking to increase its rate through the PGA/ACA process. Therefore, it does, in general, have the burden of proving that its proposed rate is just and reasonable. However, the existence of Section 393.150 does not establish that ANG has the burden of proof as to all issues. Requiring ANG to prove the negative of Staff's assertion regarding double recovery would violate the rule set forth in *Dycus*.

Staff argued in its initial brief that an exception to the *Dycus* rule should apply in this case. Staff claimed that ANG should have the burden of proving that it has not already recovered the value of the stored gas because the evidence that would be required to prove that ANG has already recovered the value of the gas through operation of tariff sheet 44 is in the exclusive control of ANG. The exception to the burden of proof rule cited by Staff certainly does exist. However, Staff's argument must fail because there was no showing that ANG had exclusive or even primary control over any documents or other evidence relevant to the determination of the issues in this case. There is no indication in the record that the Staff requested that ANG produce any documents that were not produced. In fact, ANG's expert witness, Mark S. Kidd, testified that he had based his analysis of the operation of tariff sheet 44 on documents that he reviewed at the offices of the Commission. Far from establishing that there were any documents or other evidence in the exclusive control of ANG, Staff's witness, Michael Wallis, testified that there were no missing documents.

Allegation of Double Recovery

Staff's initial position, as set forth in direct testimony of Michael J. Wallis, was that the fact of ANG's double recovery for gas sold out of storage was essentially self-evident. Wallis testified that "[p]rior to December 1, 1995, ANG would have recovered the amounts in its LNG and NGPL non-S2 storage accounts by (1) including the entire . . . commodity gas cost amount in its ACA filing and (2) excluding from the

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ACA filing the subsequent withdrawal, from storage of the... commodity gas amount which had previously been injected into storage." On December 1, 1995, ANG switched to an accounting system whereby it recovered the amounts in storage by including in its commodity gas amount in its ACA filing the value of the gas withdrawn from storage. Thus, Staff argued that ANG included the value of the gas in its ACA filings both at the time the gas was injected into storage and at the time it was withdrawn from storage, resulting in a double recovery by ANG.

ANG through the rebuttal testimony of Mark Kidd argued that what seemed to be a double recovery in fact was not so. ANG contended that it had injected and withdrawn essentially equal values of gas since 1982 when the ACA mechanism first went into effect. Therefore, ANG would have recovered essentially the same amount under the ACA mechanism whether it used the "as injected" or the "as withdrawn" method of accounting for the value of gas in storage. Therefore, there was no double recovery and ANG should be able to recover the value of gas as withdrawn after December 1, 1995 to the extent that the recovered gas was being taken from the balance that existed in 1982, when the ACA mechanism went into effect. ANG's theory is premised on the existence of a pre-existing balance of gas in storage at the start of the ACA process in 1982. Staff did not attempt to refute ANG's calculations regarding the interaction between the "as injected" and "as withdrawn" methods. Instead, Staff argued that the value of the pre-existing balance of gas in storage had already been recovered by ANG prior to the inception of the ACA process.

As the basis for this theory, Staff cited the operation of tariff sheet 44, which was the PGA mechanism in effect for ANG for the period of June 2, 1978 to July 8, 1982. Staff argued that tariff sheet 44 allowed ANG to recover its storage withdrawal cost in an up-front fashion by charging its Missouri customers an estimated PGA rate which was based on the Company's average cost of gas - determined by using the most recent supplier invoices - to compute the appropriate adjustments to its rates. Staff pointed out that tariff sheet 44 does not state that ANG was to use the most recent supplier invoices less storage injections. Therefore, ANG would have been allowed to include the value of all gas purchased, whether stored or sold, in its PGA rates.

Staff's position is persuasive. From June 2, 1978 to July 8, 1982, tariff sheet 44 served as ANG's PGA Clause for the SEMO District and it controlled ANG's recovery treatment of storage injection and withdrawal costs during that period. As of July 8, 1982, the date tariff sheet 44 was canceled, ANG had fully recovered its storage costs incurred up to that date. In order to understand the fact of this recovery, it is important to understand that tariff sheet 44 operated in a pre-FERC Order 636 environment in which all components of gas supply and service were provided by the pipeline and appeared on the pipeline invoices.

Before the Federal Energy Regulatory Commission (FERC) issued Order 636, interstate natural gas pipeline companies provided local distribution companies with

a bundled gas supply, transportation and storage. FERC Order 636 required interstate natural gas pipelines to unbundle their gas supply service from their transportation and storage services. Prior to FERC Order 636, components of gas supply service included fixed and variable storage charges, fixed and variable transportation charges and all gas supply costs, irrespective of whether that gas supply flowed directly to the city gate or was injected into storage. Thus, fixed and variable storage charges would have been included on pipeline supplier invoices in the pre-Order 636 environment in which tariff sheet 44 operated. When ANG changed its recovery mechanism for LNG and NGPL non-S2 gas on July 8, 1982, it had already recovered the gas cost associated with those volumes injected into storage prior to that date. To allow it to recover those costs again when the gas was removed from storage after December 1, 1995 would indeed result in double recovery.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Associated Natural Gas Company, a division of Arkansas Western Gas Company, is a gas corporation as defined under Section 386.020(18), RSMo (Supp. 1997)

Associated Natural Gas Company, a division of Arkansas Western Gas Company, is an investor-owned public utility engaged in the provision of natural gas service in the State of Missouri and is, therefore, subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, RSMo.

Associated Natural Gas Company, a division of Arkansas Western Gas Company, has the burden of proving that the increased rate or proposed increased rate is just and reasonable. Section 393.150.2, RSMo (1994).

The Staff of the Missouri Public Service Commission has the burden of proving its assertion that Associated Natural Gas Company's SEMO District gas costs should be reduced by \$254,476 to eliminate an alleged double recovery, in ANG's 1995-1996 ACA filing, of Liquefied Natural Gas (LNG) and Natural Gas Pipeline of America (NGPL), non-S2 storage withdrawal dollars which allegedly occurred as a result of ANG's change in ACA recovery methodology with regard to storage injection and withdrawals. *Dycus v. Cross*, 869 S.W. 2d 745, 749 (Mo. banc 1994).

IT IS THEREFORE ORDERED:

1. That Staff's proposal to reduce Associated Natural Gas Company's SEMO District gas costs by \$254,476 to eliminate an alleged double recovery is affirmed.
2. That Associated Natural Gas Company's request to increase its SEMO District gas costs by \$19,522 is denied.
3. That any pending motions or objections not specifically ruled on in this order are hereby denied or overruled.
4. That this Report and Order shall become effective on February 5, 1999.

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Lumpe, Ch., Crumpton and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Murray and Drainer, CC., dissent with opinion.

**DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY AND VICE
CHAIRMAN DIANNE DRAINER**

We respectfully disagree with the opinion of the majority in the Report and Order. We are not convinced that the evidence presented is sufficient to support the findings of the majority. We found the evidence presented by Associated Natural Gas Company's witness to be more persuasive, just and reasonable with respect to the 1995-1996 Actual Cost Adjustment. For this reason, we respectfully dissent.

**In the Matter of the Petition of GTE Midwest Incorporated Re-
garding Price Cap Regulation Under RSMo Section 392.245
(1996).**

*Case No. TO-99-294
Decided February 4, 1999*

Evidence, Practice & Procedure §33. Where Staff sought reconsideration of the Commission's order granting price-cap status on the basis of the same arguments already presented to the Commission, the application for reconsideration would be denied. Where Public Counsel sought rehearing of the Commission's order granting price-cap status on the basis of matters irrelevant to the standard established by statute for determining price cap status, the application for rehearing would be denied.

**ORDER DENYING REHEARING AND
GRANTING RECONSIDERATION**

I Procedural History

On January 26, 1999, the Commission issued its Order Approving Price Cap Application. This authority was granted pursuant to Section 392.245 of the Missouri Statutes.¹ Section 392.245(2) states, in pertinent part, that once the Commission has determined that an alternative local exchange telecommunications company has been certificated to provide basic local telecommunications services and is providing such service in any part of a large incumbent local exchange telecommunication company's service area, the company shall be subject to price cap regulation. (Emphasis added.) The statute does not require notice to the public nor does it state that such determination may only be made after hearing.

¹ All statutory references herein are to the Revised Statutes of Missouri cumulative supplement 1997 unless otherwise stated.

In fact, the statute does not require findings of fact and conclusions of law but, rather, only anticipates “a determination by the Commission” that such events have occurred.

On January 26, the Staff of the Missouri Public Service Commission (Staff) filed its Motion To Reconsider Order Approving Price Cap Application. On January 28, the Commission issued an order reducing the time within which any response to the Staff’s Motion To Reconsider shall be filed. Also, on January 28, the Commission issued an Order Of Correction *Nunc Pro Tunc*. This order of correction noted that the section of the Commission’s order referred to as “concurrences” was inadvertently omitted and it set out the vote of the five Commissioners. On January 29, the Office of the Public Counsel (Public Counsel) filed its Motion For Rehearing.

GTE filed its response to both the Staff’s Motion For Reconsideration and Public Counsel’s Motion For Rehearing on February 1 and along with those responses GTE filed the affidavit of M. Michael Foster which verified the contents of GTE’s application as filed on January 7, 1999.

On February 2, AT&T Communications of the Southwest, Inc. (AT&T) filed its Motion For Rehearing Or Reconsideration. AT&T was not a party to this case nor did it request intervention prior to or contemporaneous with its Application For Rehearing Or Reconsideration. However, the Commission has determined that it need not address this procedure, as it would not be dispositive to the outcome of this case. The Commission will rule upon AT&T’s Motion For Rehearing Or Reconsideration along with the motions of Staff and Public Counsel.

II Staff’s Motion To Reconsider

Many of the issues which were raised by Staff in its Motion To Reconsider are the same issues which were raised also by the Public Counsel in its motion. Rather than address those issues twice, the Commission will only address those which are particular to the Staff’s pleading at this point.

Staff was served a copy of GTE’s application on the date of filing, January 7, 1999. Staff noted that it could have filed a Motion To Intervene during the period between the initial filing and the Commission’s Order Approving Price Cap Status. Staff specifically states that “[S]ome assumed the Commission would follow the same procedure in this case as it did in the previous price cap application of SWBT”. Staff cites no authority for the proposition that the Commission must follow the same procedure in every case. Staff cites the first price cap case (TO-97-397), as the example which it “assumed” the Commission would follow. This fails to take into account the fact that Case No. TO-97-397 was a case of first impression and required substantially greater scrutiny than the Commission would intend to apply to subsequent applications. Further, Staff cites no authority for the proposition that a party which has incorrectly “assumed” what procedure might be followed should be given a second chance so that it might rectify its assumption.

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Staff also raises the fact that the Commission Agenda² indicated only that Case No. TO-99-294 was to be discussed on January 20, and the Commission Agenda for January 26 “merely listed ‘Order Regarding Price Cap Application’ giving Staff no further information that would have indicated the substance of the order”. Staff has failed to cite any authority for the proposition that the Commission is obligated to give Staff or any other party additional information concerning the issues to be taken up at the Commission’s Agenda. Until the Commission convenes its public meeting, meets as a body, and records a vote, it cannot publish the outcome of its meeting nor can it anticipate whether any given order will grant or deny the action requested by the parties. To do so would border between speculation and precognition. Furthermore, the “Sunshine Law” as found at Chapter 610.020 requires only that public governmental bodies give notice of the time, date, place of each meeting and its tentative Agenda. The Commission exceeds the statutory requirements by providing that additional detail which it publishes within its Agenda document.

Lastly, Staff addresses an allegation that GTE may be over-earning. Staff alleges that it had begun a preliminary investigation into the possible over-earnings of GTE, however, the record indicates that that investigation, or at least the data requests which would initiate an investigation, were not sent until January 12, five days after GTE filed its price cap application.

III. Public Counsel’s Motion for Rehearing

Public Counsel alleged numerous procedural irregularities in its Motion For Rehearing. However, there is no citation within its ten-page motion to the only two issues which are pertinent to a price cap determination. As set out in Section 392.245.2, the Commission is only required to make two determinations:

- (1) that an alternative local exchange telecommunications company has been certificated to provide basic local telecommunications services...in any part of the large incumbent company’s service area...and
- (2) that the aforementioned competitor “is providing such service in any part of the large incumbent company’s service area...”.

The plain language of the statute neither requires nor permits the Commission to investigate the various types of issues which Public Counsel has enumerated in its motion. The Commission’s conclusion on this matter has been reviewed and upheld by the Cole County Circuit Court.³ This case, which was brought by the Public Counsel on the Commission’s previous price cap determination, resulted in

² The Commission Agenda, when referred to as a document, is that document which the Commission publishes at least one business day in advance to give public notice of the issues to be taken up at the next Commission Agenda meeting.

³ See *State ex. rel. Public Counsel v Public Service Commission*, Circuit Court, Cole County, Missouri Case No. CV197-1795CC (August 6, 1998).

an order from Judge Thomas J. Brown which found that the delay necessary for a complaint proceeding “would be unreasonable and not consistent with the legislature’s intent.”⁴

While the Staff, Public Counsel, and AT&T may wish for a result which is different from the one which the Commission is mandated to reach, the motions of Staff, Public Counsel, and AT&T to initiate an investigation into GTE’s earnings are too late. To quote the Commission’s finding in the Southwestern Bell Telephone Company price cap case, “If Staff or OPC believed that SWBT was over-earning, either could have filed a complaint at an earlier point in time.”⁵ Although the parties had the benefit of the Commission’s finding on this very issue in September 1997, they declined to act for the remainder of 1997, for the entirety of 1998, and not until after GTE filed its Application For Price Cap Status in January 1999.

In paragraph two of Public Counsel’s Motion, it alleges that the Commission erred as a matter of law when it issued an order approving GTE’s application without docketing this petition for hearing, without notifying the public and the industry, without allowing intervention of any interested parties...without giving any party, including the Office of the Public Counsel, an opportunity to be heard...”. Public Counsel alleges that the Commission has not notified the public. However, it is the Public Counsel’s statutory duty to represent the public⁶ and Public Counsel has not denied the fact that it was served with a copy of GTE’s petition on January 7. Public Counsel not only had constructive knowledge of the application, but it had actual knowledge of the application on the date the application was filed. Public Counsel alleges that the Commission did not allow intervention, however, at no time has the Public Counsel or any other party requested intervention. Similarly, neither the Staff nor the Public Counsel, both of whom had actual notice, moved for a hearing prior to the issuance of the Commission’s order.

Although the plain and unambiguous language of Section 392.245 does not require any necessity for notice and/or hearing as may be found in many other sections within Chapter 392⁷. In a perfect world, the Commission would prefer to give notice even when none is required, and in light of the statutory review of this topic as set out in GTE’s response it is clear that the Commission has an exemplary record of giving notice when none is required. As in all cases, the Commission

⁴ At 5-6.

⁵ In re the petition of Southwestern Bell Telephone Company for a determination that it is subject to price cap regulation under Section 392.245, RSMo Supp. 1996, Case No. TO-97-397, Report And Order, page 20, issued September 16, 1997.

⁶ Section 386.710

⁷ The Commission will not enumerate these examples as GTE has already done a thorough job of this on page 2 of its response to Public Counsel’s motion for rehearing.

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must weigh the burden versus the benefit of these procedures just as a court would do. In any event, as indicated in the pleadings and as stated herein, the Commission has in the past offered more notice than was legally required and will endeavor to continue to do so in the future.

The only evidence which could possibly prevent GTE from being granted price cap status would be either that there is no competitive telecommunications company certificated to offer service in GTE's service area or that such company, although certificated, was not actually offering the requisite service. Although Staff, Public Counsel, and AT&T have each offered lengthy motions within which they argue for rehearing, none of them has been able to submit any evidence to dispute the fact that GTE has met the statutory requirement by which it *shall* be granted price cap status. In fact, it is noteworthy that Staff, Public Counsel, and AT&T were each completely silent on this issue in spite of the fact that this is the only issue which is of legal significance in the determination required by Section 392.245.2.

In paragraph O. of Public Counsel's motion, it raises a concern regarding the possible sale of the Lewistown and LaBelle exchanges. The Commission has already addressed this issue and will, in this order, further address the procedure by which the Commission will review any such sale.

Lastly, in paragraph P. of Public Counsel's motion, the Public Counsel alleges that the Commission's order fails to consider any evidence of the justness and reasonableness of the rates subject to price caps. Although Public Counsel goes on to state "There is a real issue of fact in this case as to the appropriateness of capping rates which are in excess of GTE's lawful authority..." the Commission must again remind the parties of the determination of the Cole County Circuit Court on this same issue in the Southwestern Bell Telephone Company's price cap case.

2. Under Section 392.245.2 RSMo Supp. 1997, the application of price cap regulation is mandatory upon the PSC's determination that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service anywhere in a large incumbent telecommunication company's service area.

3. Once the PSC makes a determination that the criteria specified in Section 392.245.2 RSMo Supp. 1997 has been met, it loses the authority to examine the justness and reasonableness of SWBT's rates, charges, tolls and rentals for telecommunications service.

4. Section 392.245.2 RSMo Supp. 1997 does not explicitly establish any deadlines by which the PSC must make its determination as to whether the criteria specified therein have been met. The statute implicitly requires, however, that the determination be made in a reasonable time.

5. The statutory requirements applicable to small local exchange telecommunication companies supports the view that the determination required under Section 392.245.2 must be made within a reasonable time. Under that section, a small incumbent local exchange telecommunications company may opt into price cap regulation upon simple written notice to the PSC, if the same criteria which makes price cap regulation mandatory for a large incumbent telecommunications company had been met. It would be unreasonable to interpret the statute to permit small incumbent telecommunications companies to opt into price cap regulation upon simple written notice to the PSC, but permit the PSC to unreasonably delay the determination which would make price cap regulation mandatory for large incumbent telecommunications companies.⁸

Rather than continue to respond to Public Counsel's arguments on a point-by-point basis, the Commission would merely note that those arguments are not and could not be dispositive of the outcome of this case and would therefore refer the parties to the responsive pleadings by GTE in which each of these arguments has received an appropriate response or clarification.

IV. AT&T's Motion

AT&T has filed a Motion For Rehearing Or Reconsideration in which it addressed the same basic issues as those contained in the motions of Staff and Public Counsel. AT&T has made the same claim of Staff and Public Counsel in that it argues that fundamental due process concepts as well as long-established Commission practice require both notice and an opportunity to be heard. However, AT&T has not cited any statutory authority for this and AT&T should be aware that previous Commission actions have no precedential value. Assuming for the sake of AT&T's argument, that the Commission was bound by its own precedents, the notice which is specifically and statutorily required in other cases is not relevant in a price cap case where notice is not required. Although AT&T has made a point of citing those procedures in which the Commission routinely gives notice, it has failed to cite other procedures in which the Commission routinely does not issue notice.

In any event, neither procedure is binding precedent as the Commission's mandate is to follow the provisions of the controlling statute. AT&T has alleged that the Commission has relied upon GTE's unverified petition and has erred in doing so without the benefit of any competent and substantial evidence. Prior to the filing of AT&T's motion, GTE has supplied the necessary, and previously

⁸See State ex. rel. Public Counsel v Public Service Commission, Circuit Court, Cole County, Missouri Case No. CV197-1795CC (August 6, 1998). Revised Findings of Fact And Conclusions of Law and Judgment, p. 4-5.

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omitted, affidavit for its verified petition. AT&T's argument on this point seems to suggest that the Commission has not and cannot consider its own records.

AT&T's remaining arguments have to do with GTE's hope to sell some of its exchanges, possibly including the exchanges in which it now has competition, and also upon the possibility that GTE is only selling its high-cost exchanges. These issues have been addressed, to some extent, previously in this order and will be finally addressed in the Commission's conclusion.

V. Conclusion

The Commission has thoroughly reviewed the entire record including the pleadings of the Staff, Public Counsel, and AT&T, and has in particular reviewed Section 392.245. Having done so, the Commission finds that none of the applicants for rehearing have provided the Commission with persuasive legal argument demonstrating that the Commission's initial determination is incorrect. The Commission has determined here, just as it determined in the Southwestern Bell Telephone Company price cap case, that in reviewing Section 392.245 in its entirety, the Commission finds nothing in it which would create any ambiguity or which would authorize an earnings investigation of GTE in this context. Much to the contrary, a reading of Section 392.245 in its entirety suggests otherwise.

If the legislature had intended the conversion to price cap regulation to be contingent on the existence of "effective competition," it could have included such language in Section 392.245.2, as it did in Section 392.245.5. Similarly, if the legislature had intended to either require or to allow the Commission discretion to conduct "one final rate case" in order to rebalance rates prior to conversion to price cap regulation, it could have included such a provision as part of Section 392.245.2. The concept of "over-earnings" is peculiar to rate-base/rate-of-return regulation and has no relevance to price cap regulation. Both regulatory schemes have advantages and disadvantages, and the Commission finds that the legislature chose to require the use of price cap regulation for large incumbent local exchange telecommunications companies upon the occurrence of certain events. Section 392.245.2 contains the mandatory imperative "shall". See *Citizens for Rural Preservation v. Robinett*, 648 S.W.2d 117, 132 (Mo.App. 1982) (holding that use of the word "shall" generally imposes a mandatory duty upon those entrusted with the implementation of a statute, particularly where the use of the word "shall" is contrasted with use of the word "may" in the same statutory section). Thus, the Commission's discretion to set maximum allowable prices for price cap regulation under Section 392.245 is limited.

Lengthy stays, as required by a rate investigation at this time, are not contemplated by Section 392.245, as Section 392.245.4 provides that except under certain circumstances, the maximum allowable prices of a large incumbent local exchange telecommunications company for basic local telecommunications service and exchange access service shall not be changed prior to January 1, 2000. This provision could not be given realistic effect given the time required for a full-rate proceeding,

and is further suggestive that “one final rate case” was not contemplated by the legislature.

In the Southwestern Bell Telephone Company price cap case, the Commission stated:

While the Commission may be willing to stay a proceeding in an appropriate case, this is not such a case because a rate case was not timely filed. Nevertheless, the Commission will not speculate as to whether it would or could have stayed SWBT’s petition in the event that a major rate proceeding was underway but uncompleted at the time the petition was filed.⁹

Finally, the Commission stresses that the application of price cap regulation under Section 392.245.2 will not exempt a company so regulated from the “Commission’s jurisdiction over quality and conditions of service or to relieve telecommunications companies from the obligation to comply with Commission rules relating to minimum basic local and interexchange telecommunications service.” 392.245.6 Price cap regulation is a method of regulating the maximum prices charged by a company. See §392.245.1.

The Commission has repeatedly committed itself to actively pursuing instances where Missouri’s utility customers are receiving substandard or inferior service. The Commission will, in a separate case, encourage Staff, Public Counsel, and any other interested party to pursue allegations of questionable quality of service, and the Commission remains ready to convene hearings and to adduce evidence on those issues.

Likewise, the Commission has previously noted its concerns regarding the possibility that GTE may request permission to sell the Lewiston and LaBelle exchanges or for that matter any of its exchanges. Prior to permitting such a sale and transfer to take place, the Commission is committed to ensuring that those exchanges are receiving and will continue to receive adequate service. In addition, prior to authorizing any such sale, the Commission has previously announced its intent to review whether or not such a sale would remove from the effected company the only exchanges in which it has competition.

Should such a sale occur, the Commission would have at least two options. First, the Commission could revoke the price cap status of the applicant or, if it were to be found that the Commission did not have the jurisdiction to revoke price cap status, the Commission may well find that it would not be in the public interest to allow those exchanges to be sold. On these commitments, the Commission has not and will not waiver.

Where the parties have alleged that the Commission relied upon an unverified petition, that alleged irregularity has since been corrected and, in part, forms the basis of this reconsideration. Where the parties have alleged that the Commission took official notice of Commission records without allowing adequate notice to the parties, the Commission first notes the argument of GTE’s counsel that at the point

⁹Case No. TO-97-397, Report And Order, page 20. (September 16, 1997).

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at which those actions took place, this case may well have been in a posture which did not require such notice. However, the Commission is without jurisdiction to make a constitutional determination as to what is or is not a contested case.

Irrespective of that argument, the Commission allowed a ten-day effective date on that order which provided the parties the requisite ten days in which to respond to the information upon which the Commission was acting. The parties have responded and, as indicated above, have alleged error in every other matter except the matter which is of most legal significance, to wit: neither Staff nor Public Counsel has made any allegation that Mark Twain Telecommunications Company is not providing the requisite service within the Lewiston and LaBelle exchanges of GTE's service territory. Having failed to make such an allegation, the determination required of the Commission pursuant to Section 392.245.2 remains unchallenged.

If the Commission were to grant rehearing in this matter, the rule of law would prohibit the parties from raising any new issues in the rehearing which were not raised in the Request For Rehearing. For that reason, the parties would be forbidden to raise the issue of Mark Twain's competition and service in the Lewiston and LaBelle areas and for that reason the parties would be forbidden, by law, to raise the only two issues which are relevant to the Commission's statutory determination. Therefore, the Commission has granted the motion(s) for reconsideration in an effort to address the concerns raised in both the motions for a rehearing and for reconsideration.

VI. Ordered Paragraphs

IT IS THEREFORE ORDERED:

1. That the Staff's Motion For Reconsideration is granted as set out within this order.
2. That the Office of the Public Counsel's Motion For A Rehearing is denied.
3. That the Motion of AT&T Communications of the Southwest, Inc. for Rehearing Or Reconsideration is denied as to the rehearing and granted as to the reconsideration.
4. That the verification filed by G.T.E. Midwest, Inc. is accepted in the record.
5. That all motions or requests not specifically addressed in this order are denied.
6. That this order shall be effective on February 4, 1999.

Lumpe, Ch., Crumpton, and Drainer, CC., Concur.
Schemenauer, C., Dissents. Murray, C., Absent.

Roberts, Chief Regulatory Law Judge

**DISSENTING OPINION OF
COMMISSIONER ROBERT G. SCHEMENAUER**

I respectfully dissent with the majority of the Commissioners on granting price cap regulation status to GTE Midwest Incorporated (GTE) without a hearing.

The issues raised by Staff and The Office of Public Counsel should have been examined and evaluated through the hearing process. This would not have unduly delayed the granting of price cap regulation status to GTE and may have moved the Commission to require some operational adjustments on the part of GTE prior to granting price cap regulation status.

Osage Water Company, Complainant, vs. Ozark Shores Water Company, Inc., Vernon Stump, Joe Butts, Marlen Frank, John Ferrante, Leon Swope, Richard Brown, The Miller County Water Authority, Inc., and Centrust Capital Corporation, Respondents.

*Case No. WC-97-152
Decided February 9, 1999*

Public Utilities §6. When an attorney represents a party to a case, he may not appear as a witness in that case.

ORDER GRANTING MOTION TO DISMISS

On September 24, 1998, an evidentiary hearing was convened in this case. At that hearing, after opening statements were heard, Osage Water Company (Complainant or Osage) attempted to use the only attorney present representing Osage (Gregory D. Williams) as the only witness presenting evidence on behalf of Osage. Ozark Shores Water Company, Inc., Vernon Stump, Joe Butts, Marlen Frank, John Ferrante, Leon Swope, Richard Brown, The Miller County Water Authority, Inc., and Centrust Capital Corporation (Respondents) objected to the attorney representing Osage also testifying on its behalf. The Commission did not allow Mr. Williams to testify, adjourned the hearing, and did not rule on the motion to dismiss at that time. The Commission allowed Respondents until September 29 to file a written motion to dismiss, and allowed Complainant until October 6 to respond to that motion.

On September 29, Respondents filed a Motion to Dismiss. Respondents base their motion on the circumstances arising at the evidentiary hearing, as well as the fact that Mr. Williams had submitted prefiled written testimony and acted as an attorney on Complainant's behalf by filing pleadings.

On October 8, two days after the deadline established for responding to Respondents' Motion to Dismiss, Complainant filed his response. Complainant alleges that admissions made by Respondents are sufficient evidence to support the

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complaint. Complainant claims that it "read these admissions into the evidence" during its opening statement. Complainant is mistaken about the evidentiary value of an opening statement; it has none. Missouri courts have long held that what is said in opening statement is not evidence. (See, e.g., *State v. Payne*, 958 S.W.2d 561, (Mo. App. E.D. 1997), at 565).

Complainant asserts that the motion made by Respondents at the evidentiary hearing was untimely, in that Respondents had known for some time before the hearing that Mr. Williams had filed both prefiled testimony and pleadings. As discussed herein, the Commission finds no serious harm in Mr. Williams having filed both prefiled testimony and pleadings. The Commission does find harm in Complainant appearing at the evidentiary hearing without a competent witness, and this is part of the basis of Respondents' motion to dismiss.

Complainant also asserts that it interprets the phrase "at a trial" in Rule 4-3.7 to not encompass hearings before the Commission. The Commission's rules, at 4 CSR 240-4.020(1), specifically adopt Civil Rule 4, Code of Professional Responsibility, including Rule 4-3.7. This assertion is without merit.

The Commission finds that Mr. Williams' filing of pleadings and prefiled testimony in this case, while irregular, has not prejudiced Respondents. If it had prejudiced Respondents, the Commission would have expected Respondents to have objected at the time Mr. Williams filed prefiled testimony. The general purpose of the rule prohibiting an attorney from testifying in a proceeding in which he appears as an attorney is to allow the trier of fact to clearly discern whether the attorney is speaking as a witness or an advocate. Since the prefiled testimony and the pleadings are separate documents, there is no problem discerning which role Mr. Williams was filling in each instance.

However, by attending the evidentiary hearing without a witness able to testify on its behalf, Osage was unable to offer any competent evidence to support its complaint against Respondents. As a result, it has utterly failed to meet its burden of proof. Since Complainant was unable to adduce any competent evidence to support its complaint, that complaint will be dismissed.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss filed on September 29, 1998, by Ozark Shores Water Company, Inc., Vernon Stump, Joe Butts, Marlen Frank, John Ferrante, Leon Swope, Richard Brown, The Miller County Water Authority, Inc., and Centrust Capital Corporation is granted.

2. That the Complaint filed by Osage Water Company on October 16, 1996 is dismissed.

3. That this order shall become effective on February 19, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Mills, Deputy Chief Regulatory Law Judge

**In the Matter of the Investigation into the Exhaustion of Central
Office Codes in the 314 Numbering Plan Area.**

Case No. TO-98-212
February 9, 1999

Telecommunications §§1, 8. The Commission approved dates for the completion of permissive dialing, mandatory dialing and intercept recording dates as proposed by the Technical Committee for the implementation of the 314/636 area code split.

**ORDER ESTABLISHING PERMISSIVE DIALING, MANDATORY
DIALING AND MANDATORY INTERCEPT DATES**

On January 26, 1999, the Commission issued its order directing the Technical Committee to submit proposed dates for permissive and mandatory dialing by February 4, 1999. On January 28, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its Motion to Establish Permissive Dialing, Mandatory Dialing, and Mandatory Intercept Dates on behalf of the Technical Committee.

The Technical Committee proposed that permissive dialing begin at 12:01 a.m. on May 22, 1999, that mandatory dialing begin at 12:01 a.m. on February 26, 2000, and that intercept recording (on calls mis-dialing the area code) should be mandatory through 12:01 a.m. on March 25, 2000. The motion stated that a nine-month permissive dialing period and a 30-day intercept period is common, practical and proved to be adequate when implementing the 573 and 660 Numbering Plan Areas (NPA or NPAs).

The Technical Committee also requested that the Commission grant this motion at its earliest convenience as the 314 NPA is operating under a jeopardy plan due to a shortage of central office codes. No other pleadings were received.

The Commission finds that the proposed permissive dialing, mandatory dialing and mandatory intercept dates are reasonable and will be approved.

IT IS THEREFORE ORDERED:

1. That the recommendation of the Technical Committee that permissive dialing begin at 12:01 a.m. on May 22, 1999, that mandatory dialing begin at 12:01 a.m. on February 26, 2000, and that intercept recording be mandatory through 12:01 a.m. on March 25, 2000, is approved in the implementation of the 314/636 NPA split.

2. That this order shall become effective on February 19, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur.

Register, Regulatory Law Judge

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In the Matter of the Investigation into the Earnings of Seneca Telephone Company and Goodman Telephone Company.

Case No. TR-98-373
Decided February 10, 1999

Telecommunications §14. After hearing, the Commission approved a nonunanimous stipulation and agreement that established access rate parity between interLATA and intraLATA calls, eliminated the Carrier Common Line (CCL) Cap, and established a CCL terminating to originating ratio consistent with the ratio of other local exchange companies in Missouri.

APPEARANCES

W.R. England, III, Attorney at Law, Brydon, Swearengen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for Seneca Telephone Company and Goodman Telephone Company.

Carol M. Keith, Assistant General Counsel and *David J. Stueven*, Assistant General Counsel P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Shannon Cook, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Paul S. DeFord, Attorney at Law, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108-2684, for AT&T Communications of the Southwest, Inc.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

On February 27, 1998, the Staff of the Missouri Public Service Commission (Staff) and Seneca Telephone Company and Goodman Telephone Company (Seneca-Goodman) filed a joint motion to open docket. The motion indicated that Staff had conducted a per book review of the earnings of Seneca-Goodman. The Staff's review was based upon the twelve months ending December 31, 1996, updated for known and measurable changes occurring during 1997. The motion indicated that Staff and Seneca-Goodman had executed a Stipulation and Agreement to resolve all issues surrounding the audit performed by Staff and the results of that audit. The Stipulation and Agreement was attached to the joint motion and Staff and Seneca-Goodman requested that the Commission approve the Stipulation and Agreement.

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On March 10, the Commission issued an Order Establishing Case, Giving Notice and Setting Intervention Date. That order provided that any parties wishing to intervene should file an application to do so no later than April 9. On April 3, Southwestern Bell Telephone Company (SWBT) filed an Application to Intervene. AT&T Communications of the Southwest, Inc. (AT&T) filed an Application to Intervene on April 6. On April 17, the Commission issued an order granting the intervention applications of SWBT and AT&T.

The April 17 order also scheduled a prehearing conference for May 1, and directed the parties to file a proposed procedural schedule. Staff filed a Motion to Establish Procedural Schedule on June 19 and the Commission issued an Order Adopting Procedural Schedule on July 13. At the request of Seneca-Goodman, an Order Granting Protective Order was issued by the Commission on August 7, 1998. Direct Testimony was filed on behalf of Staff and Seneca-Goodman on August 10 and rebuttal testimony was filed on behalf of SWBT and AT&T on September 14. Surrebuttal testimony was filed on behalf of AT&T, Seneca-Goodman and Staff on October 13.

The parties filed a Hearing Memorandum on October 27 and an evidentiary hearing was held on November 5. Staff, Seneca-Goodman, AT&T and SWBT filed initial briefs on December 21 and reply briefs on January 21, 1999. Public Counsel did not file either initial or reply briefs.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

I. Uncontested Issues

The Stipulation and Agreement submitted by Staff and Seneca-Goodman contains several provisions that did not draw objection from any party. Those provisions are:

A. Revenue Reduction

The Stipulation and Agreement provides that Seneca-Goodman's gross intrastate revenues are to be reduced by approximately \$716,072 per year. This would result in an annual reduction of \$446,564 for Seneca and \$269,508 for Goodman.

B. Depreciation Rates

The Stipulation and Agreement authorizes Seneca-Goodman to adopt new depreciation rates that are consistent with Staff's "generic" depreciation rates for Small Telephone Companies.

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C. Elimination of Analog Carrier Equipment

The Stipulation and Agreement provides that Seneca-Goodman will invest approximately \$262,028 in digital carrier equipment, which would replace all analog carrier equipment throughout their networks. Although this modernization will cost Goodman \$60,862 and Seneca \$201,166, only \$12,166 of this cost for Goodman and \$40,233 for Seneca were included as part of the rate design changes contained in the Stipulation and Agreement.

D. Reduction of E911 Rates

The Stipulation and Agreement would reduce trunk rates for E911 service to a flat rate of \$25.00 per month, per trunk. Implementation of this rate results in a revenue reduction of \$2,084.40 for Goodman and \$4,586.40 for Seneca, a total revenue reduction for Seneca-Goodman of \$6,670.80.

E. Removal of Touchtone Charges

The Stipulation and Agreement would eliminate Seneca-Goodman's existing touchtone additives. The elimination of the touchtone rate additive will result in a decrease in annual local service revenue of \$32,322 for Seneca and \$20,970 for Goodman.

F. Expanded Local Calling Scopes

The Stipulation and Agreement requires Seneca-Goodman to implement toll-free calling among all four exchanges that they serve. The expanded toll-free calling will eliminate intraLATA toll calling between the exchanges and will reduce Seneca's revenue requirement by \$34,314 and Goodman's revenue requirement by \$81,274.

II. Contested Issues

While the parties did not object to any of the six foregoing items, there was disagreement about some other aspects of the Stipulation and Agreement:

A. Bringing interLATA and intraLATA access rates into parity.

The Stipulation and Agreement would bring interLATA and intraLATA access rates into parity. Seneca-Goodman and Staff argue that there are four reasons to set interLATA and intraLATA access rates at the same amount. First, a common set of rates makes billing more streamlined and easier to verify and maintain. Second, there is virtually no difference between the cost to haul intraLATA versus interLATA traffic. Third, the current intraLATA and interLATA access rates are different because they were established at different times, based on different test years and for different reasons. Since both rates are being revised by this Stipulation and Agreement, Seneca-Goodman and Staff state there is no good reason to have different rates. Fourth, with the advent of competition and the introduction of dialing parity in the LATA, having access rates that are different for intraLATA and interLATA traffic is unreasonable.

SWBT opposed this aspect of the agreement and argued that parity in interLATA and intraLATA access rates is not appropriate in this case. SWBT's position is that more than half of Seneca-Goodman's intrastate switched access revenue comes from intraLATA access. However, the Agreement would allocate only about a third of the access earnings reduction to the intraLATA jurisdiction with the other two thirds of the rate reduction going to the interLATA jurisdiction. SWBT argues that because intraLATA traffic has contributed a greater amount to Seneca and Goodman's over-earnings, a greater percentage of the earnings reduction should be allocated to reducing income from intraLATA access rates, which would result in a lower intraLATA access rate.

SWBT's position must be rejected. The evidence submitted by SWBT indicates only the source of Seneca-Goodman's revenues. It does not establish that Seneca-Goodman's intraLATA access rates are unreasonably high or that they are the source of its over-earnings. Even if SWBT's assumption that intraLATA traffic has contributed a disproportionate amount to Seneca-Goodman's over-earnings is accepted, its solution is inappropriate. The purpose of the Stipulation and Agreement proposed by Staff and Seneca-Goodman is not to try to compensate Seneca-Goodman's customers for past over-charges. Rather, its purpose is to establish fair and equitable rates for the future.

Access rate parity between interLATA and intraLATA calls as established in the Stipulation and Agreement is a reasonable remedy to eliminate the current over-earnings of Seneca-Goodman and is in the public interest. SWBT's challenge to access rate parity is denied.

B. Elimination of the Carrier Common Line (CCL) Cap.

The Stipulation and Agreement would eliminate the intraLATA CCL Cap, which imposes a sharply reduced access rate for traffic above a certain level of annual minutes of usage. The agreement would create a single access rate no matter the amount of annual usage. SWBT opposes the elimination of the intraLATA CCL Cap, asserting that eliminating the CCL Cap would increase access rates for all minutes in excess of the cap amount. Seneca-Goodman and Staff reply that the composite access rates proposed in the Stipulation and Agreement are lower than the current composite access rates and will result in reduced revenues for Seneca-Goodman. The elimination of the CCL Cap would result in increased revenues only if intraLATA access minutes of use increase beyond current levels. Given the provision of the Stipulation and Agreement that implements extended local calling between the Seneca-Goodman exchanges, intraLATA access minutes of use are likely to decrease rather than increase. Therefore, Seneca-Goodman and the Staff argue that the elimination of the CCL Cap will not harm SWBT, and will, in fact, result in reduced access payments by SWBT.

SWBT's argument in favor of retaining the CCL Cap is not persuasive. There is no compelling evidence that would indicate that SWBT will be harmed by the

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elimination of the CCL Cap. The evidence does indicate that Staff and Seneca-Goodman have carefully considered the revenue effects of the proposed CCL rate reduction and the elimination of the CCL Cap and that the proposed changes will reduce Seneca-Goodman's revenue in the desired manner. SWBT's objection to the elimination of the CCL Cap is rejected.

C. Creating parity between the CCL originating and terminating rates of both companies.

The Stipulation and Agreement would set the ratio between terminating and originating CCL rates at 2 to 1 for Seneca and 1.6 to 1 for Goodman. AT&T argued that the terminating to originating ratio should be set at 1 to 1 for both companies. AT&T's position is that there is no economic or physical reason that an originating CCL access service minute of use would be any different than a terminating CCL access service minute of use. Therefore, the rate charged for an originating minute of use should be equal to the rate charged for a terminating minute of use. Seneca-Goodman and Staff reply that the terminating to originating ratio proposed in the Stipulation and Agreement is consistent with the terminating to originating ratio of other local exchange companies in Missouri. They argue that to require Seneca-Goodman to equalize terminating and originating CCL rates would place Seneca-Goodman at a competitive disadvantage.

The terminating to originating access charge ratio established by the Stipulation and Agreement is consistent with the ratio existing for other local exchange companies in Missouri. There is no compelling reason to impose a 1 to 1 ratio on Seneca-Goodman. AT&T's position is rejected.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

Seneca Telephone Company and Goodman Telephone Company are local exchange telecommunications service providers as defined under Section 392.410, RSMo Supp. 1997 and, therefore, are subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 392, RSMo.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1997.

Orders of the Commission must be based upon competent and substantial evidence on the record. Section 536.140, RSMo (1994). Based upon its findings of fact, the Commission concludes that the Stipulation and Agreement submitted by Seneca-Goodman and Staff should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by Seneca Telephone Company, Goodman Telephone Company and the Staff of the Missouri Public Service Commission on February 27, 1998, is hereby approved (See Attachment A).
2. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.
3. That this Report and Order shall become effective on February 23, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

EDITOR'S NOTE: The Stipulation and Agreement in this case (Attachment A) has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Assessment Against the Public Utilities in the
State Of Missouri for the Expenses of the Commission for the
Fiscal Year Commencing July 1, 1998.***

Case No. OO-99-44
Decided February 17, 1999

Evidence, Practice & Procedure §33. Where certain utilities sought rehearing because the Commission did not include in its Report & Order all of the Findings of Fact and Conclusions of Law stipulated by the parties, the application would be denied where the Commission lacked authority to make the findings and conclusions sought by the parties.

ORDER DENYING REHEARING

On December 17, 1998, the Commission issued its Report and Order in which it directed its Staff to recalculate the assessments for fiscal year 1999 omitting from the calculation the five-year averaging process and the amount of \$534,114. That order was issued to be effective on January 16, 1999. On January 15, a timely Application for Rehearing and Stay was filed on behalf of The Empire District

*See pages 43 and 112 for other orders in this case. In addition, see pages 371 and 463, Volume 7, MPSC 3d for other orders in this case.

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Electric Company (Empire) and UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp) (jointly Applicants for Rehearing). Without repeating the contents of the Application for Rehearing and Stay at length the Applicants for Rehearing generally request rehearing on the grounds that the Commission's Report and Order failed to make certain necessary findings and conclusions. The Applicants for Rehearing specifically allege error owing to the fact that the Commission failed to include *all* of the stipulated facts in its Findings of Fact. Applicants for Rehearing go on to cite 4 CSR 240-2.130(9) for the proposition that the Commission is bound by the record before it and may not ignore or modify the undisputed facts presented in the stipulation of facts. However, the rule cited does not require the Commission to restate all of the stipulated facts in its own findings of facts.

Admittedly, the Commission has declined to make many of the conclusions of law which were requested by the Applicants in the underlying case. However, within the Report and Order the Commission restated legal principles which prevent it from reaching the conclusions requested by the parties, to wit:

Although the Commission agreed to review the Motion for Rehearing it must be noted that agency adjudicative power extends only to the ascertainment of facts and the application of existing law in order to resolve issues within the given area of agency expertise. In re City of Kinloch, 242 S.W.2d 59, 63 (1951). “[A]n administrative body or even a quasi-judicial body is not and cannot be a court in a Constitutional sense.” Id. The judicial power of the State is vested only in the courts designated in Mo. Const. Art. V, Sec. 1. The Public Service Commission has no power to declare any principle of law or equity. Lightfoot v. City of Springfield, 236 S.W.2d 348, 352 (1951). Therefore, the PSC has no power to declare statutes unconstitutional. State ex rel. Missouri Southern Railroad v. Public Service Commission, 168 S.W.2d 1156, 1164 (banc 1914). The PSC may hear evidence from a party regarding the constitutionality of the statute but only for the purposes of creating a record for the issue to be resolved judicially. Missouri Bluffs Golf Venture v. St. Charles County Board of Equalization, 943 S.W.2d 752, 755 (Mo. App. Ct. 1997).

Because Missouri common law states that an administrative agency, such as the Missouri Public Service Commission, has no jurisdiction to determine the constitutionality of a statute, it seems equally apparent that the Commission lacks the jurisdiction to rule on the constitutionality of an Executive Order such as the directive issued by the Missouri Office of Administration to transfer moneys out of the Fund and into the General Rev-

enue. Based upon a review of the common law of Missouri the Commission concluded that it would convene a hearing but that the scope of any such hearing would be for the limited purpose of developing the record for the primary issue(s) to be resolved judicially¹.

The Commission has included in its Conclusions of Law only those conclusions which it has the jurisdictional authority to reach. The conclusions requested by the Applicants for Rehearing and, indeed, by the Applicants in the underlying case, are those matters to which the Commission must defer to the circuit court. The Commission has determined that if it were to reach the conclusions of law requested by the Applicants for Rehearing it would require the Commission to infringe upon the jurisdiction of the court and this the Commission will not do.

The Commission therefore determines that there is no further action which it may lawfully take in this matter and the request for rehearing or stay shall be denied.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing and Stay filed by The Empire District Electric Company and UtiliCorp United Inc. d/b/a Missouri Public Service on January 15, 1999 is denied.

2. That this order shall become effective on February 17, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent

Roberts, Chief Regulatory Law Judge

In the Matter of an Investigation to Implement a Statewide Telecommunications Equipment Distribution Program for Individuals Unable to Use Traditional Telephone Equipment Due to Disability*

Case No. TO-97-16

Decided February 17, 1999

Telecommunications §24. Pursuant to its Memorandum of Understanding with the Department of Labor and Industrial Relations and in view of the fact that the Department of Labor and Industrial Relations has promulgated emergency regulations, the Commission will rescind all of its prior orders concerning the Adaptive Telephone Equipment Program (ATEP).

¹ Report and Order pages 9-10 (December 17, 1999).

*See page 367, Volume 6 MPSC 3d for another order in this case.

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**Order Rescinding All Previous Commission Orders Regarding
The Adaptive Telephone Equipment Program**

Section 209.253.2, RSMo Supp. 1997 requires the Public Service Commission to “initiate an investigation to determine the most beneficial and cost-effective method to implement the provision of a statewide telecommunications equipment distribution program making available reasonable access to telephone service for eligible subscribers who are unable to use traditional telephone equipment due to disability.” The Commission created the mandated equipment distribution program and named it the Adaptive Telephone Equipment Program (ATEP). The Commission found that ATEP could be best administered by the Department of Labor and Industrial Relations (DOLIR).

Effective November 1, 1998, ATEP was transferred to DOLIR through a Memorandum of Understanding between the Commission and DOLIR. The Memorandum of Understanding provided that the Commission would rescind its Orders of February 26, 1996*, February 28, 1997, June 20, 1997, June 25, 1997 and December 31, 1997, by which the ATEP program was established and that DOLIR would set the parameters of the program. The Commission was to issue its order rescinding its previous orders when DOLIR had regulations or internal procedures in effect to administer the program or on March 15, 1999, whichever was sooner. On December 14, 1998, the Staff of the Missouri Public Service Commission filed a Motion to Rescind Previous Commission Orders in accordance with the Memorandum of Understanding.

DOLIR has filed an emergency rule with the Secretary of State that sets out the parameters of the program to be administered by DOLIR. The emergency rule has an effective date of March 1. It is now appropriate for the Commission to rescind its previous orders regarding ATEP.

IT IS THEREFORE ORDERED:

1. That responsibility for the Adaptive Telephone Equipment Program is transferred to the Department of Labor and Industrial Relations.
2. That Staff’s Motion to Rescind Previous Commission Orders is granted.
3. That the Commission’s Orders of July 26, 1996, February 28, 1997, June 20, 1997, June 25, 1997 and December 31, 1997, which established the ATEP program, are rescinded.
4. That this order shall become effective on March 1, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur Crumpton, C., absent

Woodruff, Regulatory Law Judge

In the Matter of the Application of Union Electric Company d/b/a AmerenUE and Boone Electric Cooperative for Approval of a Written Territorial Agreement Designating the Boundaries of Each Electric Service Supplier within Portions of Audrain, Boone, Callaway, Cole, Cooper, Howard, Moniteau, Monroe, and Randolph Counties; Authorizing the Sale, Transfer, and Assignment of Certain Electric Distribution Facilities, Easements, and Other Rights Generally Constituting AmerenUE's Electric Utility Business Associated with Its Customers Transferred Pursuant to the Territorial Agreement; and AmerenUE's Application for a Certificate of Convenience and Necessity Authorizing It to Own, Control, Manage, and Maintain an Electric Power System for the Public in Certain Portions of Audrain, Boone, Callaway, Cole, Cooper, Howard, Moniteau, Monroe and Randolph Counties.

Case No. EO-99-267

Decided March 4, 1999

Electric §6. The Commission found the following were not detrimental to the public interest and therefore should be approved: (1) the territorial and exchange agreement between AmerenUE and Boone; (2) the customer exchange between AmerenUE and Boone; (3) the facilities exchange between AmerenUE and Boone; and (4) AmerenUE's illustrative tariff sheets filed on February 11, 1999.

APPEARANCES

William B. Bobnar, Attorney at Law, One Ameren Plaza, 1901 Chouteau Avenue, P.O. Box 149 (MC 1310), St. Louis, Missouri 63166-6149, for Union Electric Company d/b/a/ AmerenUE.

Victor S. Scott, Attorney at Law, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 305 East McCarty Street, P.O. Box 1438, Jefferson City, Missouri 65102-1438, for Boone Electric Cooperative.

Shannon Cook, Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for the Office of the Public Counsel and the public.

Dennis L. Frey, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Missouri Public Service Commission.

SENIOR REGULATORY LAW JUDGE: Bill Hopkins

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REPORT AND ORDER

On December 10, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE) and Boone Electric Cooperative (Boone), collectively referred to as Applicants, filed for approval of a territorial agreement pursuant to Section 394.312, RSMo 1994. No one intervened.

Applicants requested that the Commission: (1) approve the territorial agreement between the Applicants as not detrimental to the public interest; (2) find that the territorial agreement shall not impair AmerenUE's certificates of convenience and necessity, except as specifically limited by the territorial agreement; (3) waive the Commission's billing practices rule to allow the Applicants to disconnect electric service to a customer who fails to pay the final bill of the other Applicant; (4) grant authority to change electric service providers for certain customers, pursuant to the terms of the territorial agreement; (5) grant authority to transfer certain property, pursuant to the terms of the territorial agreement; and (6) grant a certificate of public convenience and necessity to AmerenUE, authorizing AmerenUE to install, acquire, build, construct, own, operate, control, manage, and maintain an electric power system for the public within Audrain County, Section 33, Township 52 North, Range 12 West.

On February 16, 1999, the parties filed a unanimous Stipulation and Agreement (Agreement), signed by Applicants, the staff of the Missouri Public Service Commission (Staff) and Office of the Public Counsel. It is attached as Attachment A. The Agreement states that all parties support the granting of the Application.

The Agreement generally stated that the following were not detrimental to the public interest and therefore should be approved: (1) the territorial and exchange agreement between AmerenUE and Boone; (2) the customer exchange between AmerenUE and Boone; (3) the facilities exchange between AmerenUE and Boone; and (4) AmerenUE's illustrative tariff sheets filed on February 11, 1999.

Staff did not file a separate memorandum or recommendation but made their views known in the Agreement. The Agreement stated that Staff had reviewed the joint application along with supporting information, and had performed a field inspection of the area subject to the territorial and exchange agreement. Staff stated that the public interest will be served by reducing duplication of facilities and by enabling each utility to plan for future needs as the sole electric supplier in their respective designated areas, as set forth in the territorial and exchange agreement. Staff also stated that the rate impact will be minimal for customers who would be transferred.

The Stipulation and Agreement also provided that UE should file its revised tariff sheets with respect to its service area in Audrain, Boone, Callaway, Howard and Randolph Counties, bearing a 30-day effective date, consistent with the illustrative tariff sheets filed herein. Such filing shall be accomplished within 10 days of the effective date of the Report and Order.

On February 19, 1999, the Commission convened an evidentiary hearing wherein all of the testimony and exhibits confirmed every point in the Agreement.

The Commission specifically finds that the Commission's designation of electric service areas is in the public interest pursuant to Section 394.312.2 RSMo. Also, that the Commission, after hearing, has determined that approval of the territorial agreement in total is not detrimental to the public interest pursuant to Section 394.312.4 RSMo.

IT IS THEREFORE ORDERED:

1. That the Joint Application filed December 10, 1998 is approved.
2. That the Stipulation and Agreement, Attachment A to this order, is approved.
3. That the territorial agreement will not impair Union Electric Cooperative d/b/a AmerenUE's existing certificates of convenience and necessity, except as specifically limited by the territorial agreement.
4. That the Commission waives 4 CSR 240-13.010 *et seq.* and authorizes Applicants to disconnect the service of any customer who fails to pay the final bill of the other Applicant.
5. That Union Electric Cooperative d/b/a AmerenUE and Boone Electric Cooperative are authorized to change electric suppliers for certain of their customers as set forth in the Joint Application.
6. That Union Electric Company d/b/a AmerenUE is authorized to sell, transfer and assign part of its franchise, works or system to Boone Electric Cooperative as set forth in the Joint Application.
7. That Union Electric Company d/b/a AmerenUE is granted a Certificate of Convenience and Necessity to own, control, manage, and maintain an electric power system in Audrain County, Section 33, Township 52 North, Range 12 West.
8. That Union Electric Company d/b/a AmerenUE file its revised tariff sheets with respect to its service area in Audrain, Boone, Callaway, Howard and Randolph Counties, bearing a 30-day effective date, consistent with the illustrative tariff sheets filed herein within 10 days of the effective date of the Report and Order.
9. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties involved. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded this transaction in any later proceeding.
10. That this order shall become effective on March 16, 1999.
11. That this case shall be closed on March 17, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

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In the Matter of the Application of Kansas City Power & Light Company for Approval of Successor Trustee for its Tax Qualified Nuclear Decommissioning Trust Fund, for Approval of Trustee Fee Schedule, and for Approval of Change of Investment Manager and Investment Management Agreement.

Case No. EO-99-164
Decided March 9, 1999

Electric §45. The Commission approved Bankers Trust Company as successor trustee for an electric utility's tax qualified nuclear decommissioning fund.

ORDER APPROVING APPLICATION

Kansas City Power & Light Company (KCPL) filed an application on October 16, 1998, for approval of:

- (1) A successor trustee for its tax qualified nuclear decommissioning trust fund;
- (2) A revised trustee fee schedule;
- (3) An amendment to the nuclear decommissioning trust agreement; and
- (4) A change of investment manager and investment management agreement.

KCPL seeks the Commission's approval of Bankers Trust Company as successor trustee of the tax qualified nuclear decommissioning trust. The application indicates that the change is necessary because the existing trustee, Boatman's Trust Company, was acquired by NationsBank, which then sold its trust business to Bankers Trust Company. The trust and custody functions of the nuclear decommissioning trust fund were included in this sale. KCPL also seeks the Commission's approval of a change in the trustee's fee schedule and a change to the nuclear decommissioning trust agreement necessitated by the change in trustee. Finally, KCPL seeks approval to appoint TradeStreet Investment Associates, Inc. (TradeStreet) as interim manager of the nuclear decommissioning investment trust fund. The change is necessary because, following the acquisition of Boatmen's Bancshares by NationsBank, TradeStreet assumed management of the nuclear decommissioning fund.

On December 17, the Staff of the Public Service Commission (Staff) filed a memorandum that states that "Staff finds no reason to believe that the proposed changes will result in any detriment to the public interest or the ratepayers of Kansas City Power & Light Company." The Staff recommended approval of KCPL's application. The Commission had additional questions concerning the application and on January 26, 1999, issued an Order for Supplemental Memorandum, which directed Staff to file an additional memorandum. Staff filed the requested memorandum on February 11.

The Commission has considered KCPL's application and the memoranda of Staff and concludes that KCPL's application should be granted.

IT IS THEREFORE ORDERED:

1. That Bankers Trust Company is approved as successor trustee for Kansas City Power & Light Company's tax qualified nuclear decommissioning fund.
2. That the amendment to the trust agreement submitted by Kansas City Power & Light Company is approved.
3. That the revised trustee fee schedule submitted by Kansas City Power & Light Company is approved.
4. That the change of investment manager and investment management agreement proposed by Kansas City Power & Light Company is approved.
5. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the changes authorized by this order.
6. That the Commission reserves the right to consider any ratemaking treatment to be afforded the changes herein involved in a later proceeding.
7. That this order shall become effective on March 19, 1999.

Lumpe, Ch., Crumpton and Drainer, CC., concur
Murray and Schemenauer, CC., absent

Woodruff, Regulatory Law Judge

**In the Matter of the Merger of American Water Works Company
with National Enterprises, Inc. and the Indirect Acquisition by
American Water Works Company of the Total Capital Stock of
St. Louis County Water Company***

*Case No. WM-99-224
Decided March 23, 1999*

Public Utilities §11. The Commission found that it has no jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated utility companies.

*The Commission, in an order issued on April 13, 1999, denied a rehearing in this case.

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APPEARANCES

Paul Boudreau, Attorney at Law, and *W.R. England, III*, Attorney at Law, Brydon, Swearengen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for Missouri-American Water Company.

James M. Fischer, Attorney at Law, James M. Fischer, P.C., 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Public Water Supply District Nos. 1 & 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County.

Richard T. Ciottone, Attorney at Law, 535 North New Ballas Road, St. Louis, Missouri 63141, for St. Louis County Water Company

Shannon Cook, Assistant Public Counsel, and *John B. Coffman*, Deputy Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

William K. Haas, Senior Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

DEPUTY CHIEF REGULATORY LAW JUDGE: Lewis R. Mills, Jr.

REPORT AND ORDER

Procedural History

This case was opened to receive a Motion to Open a Docket filed by the Office of the Public Counsel (Public Counsel) on November 18, 1998. In that motion, Public Counsel requested that the Commission open a docket to consider the proposed merger of American Water Works Company (American Water) and National Enterprises, Inc. (National). American Water owns Missouri-American Water Company (MAWC), a Missouri corporation that operates as a regulated water utility in Missouri. National owns Continental Water Company (Continental), which in turn owns St. Louis County Water Company (SLCWC), a Missouri corporation that operates as a regulated water utility in Missouri. Pursuant to the agreement, American will acquire all of the common stock of National, and after the merger is effected, MAWC and Continental will be first-tier subsidiaries of American and SLCWC will be a second-tier subsidiary. Public Counsel noted that SLCWC and MAWC are the largest water utilities in Missouri. Public Counsel asserted that it is in the public interest for the Commission to give the proposed merger close scrutiny to assure that the merger does not have anti-competitive results. Public Counsel believes that the Commission has jurisdiction pursuant to Sections 386.250(3), 386.330(1), and 393.190(1)¹.

¹ All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated. At the oral argument, Public Counsel also argued that Section 393.190(2) gives the Commission jurisdiction.

On December 8, SLCWC and MAWC filed a joint response opposing Public Counsel's motion. The water companies assert that the merger is one of parent companies, and that the Commission does not have jurisdiction to review the merger. In essence, their argument was that, since each of the regulated companies will maintain its current corporate existence, the statutes cited by Public Counsel do not confer jurisdiction. Also on December 8, Staff filed a response to Public Counsel's motion. Staff stated that the Commission has not asserted jurisdiction over mergers of non-regulated parent companies when there were no changes to the operations of the regulated company, such as is the case with this merger. Staff asserted that the Commission should follow this practice now, and decline to assert jurisdiction. The Staff and the water companies urge the Commission to follow its recent decision in Case No. TM-99-76 in which the Commission declined to open a case to consider the proposed merger of Ameritech Corporation into SBC Delaware, Inc., a subsidiary of SBC Communications, Inc.

On December 7, 1998, Utility Workers of America Local 335, AFL-CIO (the Union) filed an Application to Intervene. On December 9, Public Water Supply District Nos. 1 & 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County (the Water Districts) jointly filed an Application to Intervene.

On December 23, Public Counsel filed a pleading responding to the Staff and SLCWC and MAWC. By order dated February 4, 1999, the Commission set for oral argument the question of its jurisdiction.

Oral Argument

On March 2, Public Counsel, Staff, SLCWC and MAWC presented their arguments on the question of the Commission's jurisdiction². Public Counsel argued that 386.250(3) gives the Commission jurisdiction over all water corporations and their operations in Missouri. Public Counsel also argued that 393.190(2) gives the Commission the responsibility to oversee mergers and consolidations involving regulated water systems. Public Counsel interpreted the definition of water corporation to include parent companies of regulated water utilities. Public Counsel attempted to distinguish this case from TM-99-76 on the basis that there is no federal proceeding in which this merger will be examined.

Staff addressed each of the statutory sections that Public Counsel asserted give the Commission jurisdiction over this transaction. Staff stated that 386.330(1) deals with telecommunications companies and does not apply to water companies. Staff argued that 386.250(3) is merely a general grant of jurisdiction to regulate water corporations, and that neither of the entities involved in this transaction are water corporations. The last statutes cited by Public Counsel are 393.190(1) and (2) which provide that a water corporation must first obtain Commission approval

² The Water Districts were represented by counsel, but did not participate. The Union was not represented by counsel.

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prior to entering into a merger or consolidation, or transferring or mortgaging its works or system. Staff stated that the instant transaction does not involve water corporations, so these statutes do not apply.

MAWC argued generally that the sections of the statutes cited by Public Counsel do not apply to this proposed merger. Its arguments on the statutes were very similar to those advanced by Staff. MAWC also discussed a number of Missouri cases that it believed demonstrate that the Commission has no jurisdiction over the instant merger. MAWC compared this case with others the Commission has recently considered, including TM-99-76, and concluded that the Commission has been correct in its conclusion that it has no jurisdiction to examine mergers of non-regulated parent corporations even though they may own Missouri-regulated utility companies.

SLCWC adopted MAWC's arguments. SLCWC pointed out that when Continental was formed and acquired the stock of water corporations, Commission approval was sought and received, but that when National was formed as the parent of Continental, no Commission approval was sought.

Discussion

The Commission has reviewed the arguments of the parties, the cases and the Missouri statutes cited by parties, and the structure of the proposed merger. The Commission determines that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated utility companies. The Commission's past approach to mergers of this type has been the proper one, and will be followed here. Since the Commission has no jurisdiction over this merger, it will close this case. The applications to intervene will be denied.

IT IS THEREFORE ORDERED:

1. That the Motion to Open a Docket filed by the Office of the Public Counsel on November 18, 1998 is denied.
2. That the applications to intervene of Utility Workers of America Local 335, AFL-CIO, Public Water Supply District Nos. 1 & 2 of Andrew County, Public Water Supply District No. 1 of DeKalb County, and Public Water Supply District No. 1 of Buchanan County are denied.
3. That this order shall become effective on April 2, 1999.
4. That this case may be closed on April 3, 1999.

Lumpe, Ch., Crumpton, Murray, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Schemenauer, C., dissents with opinion

Dissenting Opinion of Commissioner Robert G. Schemenauer

I respectfully dissent with the majority opinion “that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated utility companies”. The Commission is required by statute to review and approve or deny these types of transactions for the public good. I am not persuaded by Staff’s argument that “the instant transaction does not involve water corporations, so these statutes”, (386.250(3) and 393.190(1), “do not apply”.

There is no clean or unfettered separation between the ownership of American Water Works Company, Inc. (AWW) and St. Louis County Water Company (County Water) after the merger. AWW has replaced National Enterprise, Inc. (NEI) as the owner of County Water. These two corporations have merged as recited in their Summary Description of Transaction and their testimony. Each “NEI common share issued and outstanding at the effective time of the merger ...” (which constitute 100% ownership of County Water), “will be canceled and converted... to 15.5022106 shares of AWW common stock. All shares of AWW common stock issued and outstanding immediately prior to the effective time of the merger, taken together with AWW common stock issued in accordance with the merger agreement, will immediately thereafter constitute all of the issued and outstanding shares of the capital stock of the surviving corporation.” This clearly shows the intent of the merger transaction is to assimilate the ownership of County Water into AWW. One share of AWW stock represents some ownership of County Water and there is no ownership of County Water by any other entity other than AWW.

A clear reading of 393.190(1), “No...water corporation...shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, **nor by any means, direct or indirect, merge or consolidate** such works or system, or franchises, or any party thereof, with any other corporation, person or public utility without having first secured from the commission an order authorizing it ...”, requires a review of this transaction by the commission.

The drafters of this statute clearly foresaw the possible corporate manipulations that could circumvent the intent of this statute and therefore inserted such phrases as “**nor by any means, direct or indirect, merge or consolidate**” to prevent such corporate gerrymandering.

If this transaction is not a “direct” merger of a water company corporation with another corporation it surely is an “indirect” merger as contemplated by the statute. My opinion is that the Commission has erred in abdicating its responsibility to review and either approve or deny this merger. This abdication may set a fatal precedent that undermines the authority of future commissions to review similar transactions.

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**In the Matter of the Proposed Merger between GTE Corporation
and Bell Atlantic. ***

Case No. TM-99-261

Decided April 6, 1999

Telecommunications § 1. Pursuant to 4 CSR 240-2.116(2), a case may be dismissed for failure to prosecute if no action has taken place for 90 days and no party has requested a continuance.

ORDER CLOSING CASE

On December 9, 1998, the Office of the Public Counsel (Public Counsel) filed a motion to establish a case for the purpose of investigating the proposed merger between Bell Atlantic Corporation and GTE Corporation, the parent of GTE Midwest Incorporated. On December 18, GTE Midwest Incorporated filed a response in which it requests that the Commission summarily deny Public Counsel's motion to establish a case.

On December 31, the Commission notified Public Counsel that it could respond to GTE Midwest Incorporated's response no later than January 7, 1999. Public Counsel did not file such a response. No action has taken place since the Commission's December 31 notice and no party has requested a continuance. Pursuant to 4 CSR 240-2.116(2), this case will be dismissed for failure to prosecute.

When the information is available, the Commission encourages GTE to inform the Commission about the economic and job impacts of the merger on Missouri.

IT IS THEREFORE ORDERED:

1. That this case is dismissed pursuant to 4 CSR 240-2.116(2).
2. That this order shall become effective on April 16, 1999.
3. That this case may be closed on April 19, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur

Mills, Deputy Chief Regulatory Law Judge

*The Commission, in an order issued on April 22, 1999, denied a motion to reconsider the order closing this case.

**In the Matter of Missouri RSA No.7 Limited Partnership d/b/a
Mid-Missouri Cellular's Petition for Arbitration Pursuant to 47
U.S.C. Section 252 to Establish an Interconnection Agreement
with Southwestern Bell Telephone Company.***

Case No. TO-99-279

Decided April 8, 1999

Telecommunications §46.1. The issue of call rating, that is, whether a particular call shall be rated as a local call or a toll call in an interconnection environment, is an appropriate matter for arbitration under the Act.

Telecommunications §46.1. The Commission agrees with SWBT that a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the V&H coordinates of the cellular exchange lie within the local calling area of the landline exchange.

Telecommunications §46.2. The Commission agrees with SWBT that all six types of traffic at issue, i.e. interMTA traffic, transiting traffic, traffic that neither originates nor terminates on cellular network, non-local traffic associated with optional calling plans, paging traffic, and ISP traffic, should be explicitly excluded from local reciprocal compensation in the parties' Agreement for Type 2B connections.

Telecommunications §46.1. The Commission determines that the location of the originating cell at the start of a cellular to landline interMTA call is to be determined by the location of the POI of the cellular and landline networks at the beginning of the call.

Telecommunications §46.2. The Commission determines that the effective date for the local reciprocal compensation obligation under the parties' Agreement shall be the effective date of that Agreement.

APPEARANCES

W.R. England, III, and Brian T. McCartney, Brydon, Swearngen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for Missouri RSA No. 7 Limited Partnership, doing business as Mid-Missouri Cellular.

Leo J. Bub, Senior Counsel, and *Keith Davis*, Attorney, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

REGULATORYLAWJUDGE:

Kevin A. Thompson, Deputy Chief.

ARBITRATIONORDER

Procedural History

On December 21, 1998, Missouri RSA No. 7 Limited Partnership, doing business as Mid-Missouri Cellular (MMC), filed its petition seeking arbitration by this Commission of an interconnection agreement with Southwestern Bell Telephone Company (SWBT) under the Telecommunications Act of 1996. MMC

*See page 173 for another order in this case.

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requested the entry of a protective order on December 22, 1998, and the same was entered by the Commission on December 28, 1998. On January 15, 1999, SWB responded to MMC's petition.

The parties jointly filed a proposed procedural schedule on February 4, 1999, which the Commission adopted by order on February 17, 1999. Thereafter, the parties simultaneously prefiled direct and rebuttal testimony, as well as a joint memorandum setting out the issues for arbitration. MMC filed its direct testimony late; its Motion for Leave to File Out-of-Time was granted at the hearing, without objection.

The Commission held an evidentiary hearing on March 17 and 18, 1999, at the Commission's offices in Jefferson City, Missouri. All parties were represented at the evidentiary hearing. Thereafter, the Commission granted an extension of the filing dates for briefs and a late-filed exhibit at the joint request of the parties. On March 29, 1999, the parties timely filed their post-hearing briefs. On March 30 and 31, 1999, the parties filed several documents in response to a specific request by the Commission. Exhibit number 15 was reserved for this late-filed exhibit.

The three documents filed by the parties on March 30 and 31, 1999, designated Exhibit 15.1, Exhibit 15.2, and MMC's Response to Exhibit 15.1, are received and made a part of the record of this matter.

Discussion

MMC is a provider of wireless or cellular telecommunications services, operating in Missouri Rural Service Area No. 7, an area formed by six counties in west-central Missouri.¹ MMC's service area, subdivided into eight cellular exchanges, encompasses approximately 60 landline exchanges. SWBT is an incumbent local exchange carrier (ILEC) which provides basic local exchange telecommunications services to some, but not all, of the landline telecommunications exchanges in MMC's service area. When MMC began operations, it interconnected to the landline telephone network by a Type 2A trunk connection to the tandem switch at Warrensburg, Missouri, operated by United Telephone Company doing business as Sprint (Sprint).

The parties have offered evidence relative to three types of interconnection in the course of this matter. A Type 1 connection is a line-side connection to a landline end office. While the use of a Type 1 connection permits carriers to share numbers within the NXX code assigned to the end-office of interconnection, it would not permit MMC to offer various advanced features to its subscribers. A Type 2A connection is a trunk connection directly to a tandem switch. The connecting entity essentially acts as an end-office served by that tandem. A Type 2B connection is a trunk connection between two end offices and its purpose is to carry traffic between the two connected end offices.

¹ Lafayette, Johnson, Saline, Pettis, Howard, and Cooper.

Pursuant to the Telecommunications Act of 1996 (the Act), the Commission is authorized to serve as arbitrator where telecommunications service providers are unable to negotiate an interconnection agreement. MMC and SWBT bring several issues to the Commission for arbitration. The issues are set out herein exactly as the parties framed them in their issues memorandum, using the same language and numbering.

**ISSUE 1: LOCAL CALLING SCOPE—RATES TO BE CHARGED END-USERS
—LANDLINE TO MOBILE**

A. Are the calling scope and the rates to be charged to landline customers when they place a call to customers of a wireless carrier appropriate issues for negotiation and arbitration under the Telecommunications Act of 1996?

B. If so, should SWBT be required to provide local calling to MMC exchanges where such exchanges have V&H coordinates within the defined Local Calling Area for a SWBT end office?

MMC permits its subscribers, under the majority of its subscription plans, to make local calls throughout the United States. However, SWBT subscribers must pay long distance charges to call MMC's subscribers, even when both numbers are located in the same community. MMC contends that this situation impermissibly burdens its ability to effectively compete in the cellular telecommunications marketplace. MMC contends that the local dialing parity requirements of the Act, at Section 251(b)(3), mandate local call rating, even in the absence of a local interconnection.

SWBT, on the other hand, argues that its charges to its own subscribers, for calls placed to MMC subscribers, are a matter of state law under SWBT's tariffs approved by this Commission and necessarily outside the permissible scope of this arbitration. SWBT also states that, upon further study of its tariffs, a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the vertical and horizontal (V&H) coordinates of the cellular exchange lie within the local calling area of the landline exchange. Otherwise, in SWBT's view, calls from SWBT subscribers to MMC subscribers are necessarily toll calls, just like landline interexchange calls.

The Commission agrees with SWBT that the charges it makes to its subscribers are a matter of state law under its tariffs approved by this Commission. However, the Commission concludes that the issue of call rating, that is, whether a particular call shall be rated as a local call or a toll call in an interconnection environment, is an appropriate matter for arbitration under the Act. The Commission agrees with SWBT that a call from a SWBT landline subscriber to an MMC cellular subscriber is properly rated as a local call only where: (1) the landline and cellular exchanges are locally interconnected; and (2) the V&H coordinates of the cellular exchange lie within the local calling area of the landline exchange.

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The evidence received at hearing indicates that call rating is controlled by the software that drives the switches operated by the ILECs and that the call rating change sought by MMC could be achieved by modifying this software. However, MMC's expert, Michael Kurtis, was able to name one place in the nation where local calling between landline and cellular exchanges exists without local interconnections. The Commission agrees with SWBT that local call rating without local interconnection is inappropriate because the interexchange facilities of SWBT and of Sprint, a stranger to this action, would necessarily be employed in completing such calls. MMC has not addressed the compensation issues necessarily raised by its proposal.

**ISSUE2: TYPE2BINTERCONNECTION—TRAFFICTOBEEXCHANGED—
CONTRACTUALLYEXCLUDINGCERTAINTRAFFICTYPESFROMTHEOB-
LIGATIONTOPAYRECIPROCALCOMPENSATION**

A. Settled.²

B. Is it appropriate to include in the Agreement a provision excluding the following types of traffic from the reciprocal compensation obligation where a Type 2B interconnection order has been established?

- (1) InterMTA traffic?
- (2) Transiting traffic?
- (3) Traffic which neither originates nor terminates on MMC's cellular network?
- (4) Non-local traffic associated with optional calling plans (except as to subscribers to such plans)?
- (5) Paging traffic?
- (6) Internet service provider (ISP) traffic?

C. If it is appropriate to exclude any or all of the foregoing types of traffic, how is such excluded traffic to be measured or accounted for?

MMC has ordered, and SWBT has established, a Type 2B trunk connection between SWBT's Sedalia exchange and MMC's Walnut Hill exchange. If necessary to obtain local calling, MMC contemplates additional Type 2B trunk connections linking other MMC exchanges to SWBT exchanges. The parties agree that these connections should only carry traffic that originates in one of the two exchanges linked by the connection and terminates in the other.

MMC contends that all traffic carried by this connection should be subject to local reciprocal compensation. SWBT argues, however, that certain types of traffic should be explicitly excluded from local reciprocal compensation. SWBT insists that the exclusions are necessary because, under the Act, this provision is subject to adoption by other telecommunications providers in circumstances detrimental to SWBT's interests. See 47 C.F.R. § 51.809 (1997), the "pick and choose" rule.

²The parties are in agreement as to the nature of the traffic that the Type 2B connection should

carry.

The Commission agrees with SWBT that all six of these types of traffic should be explicitly excluded from local reciprocal compensation in the parties' Agreement for Type 2B connections. In addition, the parties shall jointly develop and set out in their Agreement an exclusion factor to account for such traffic. The exclusion factor may be developed from estimates, from traffic sampling, or by any other means generally used in the industry for such purposes. This exclusion factor shall be used to exclude from local reciprocal compensation a proportion of the total traffic carried by the Type 2B connection each month. The parties shall develop, and set forth in their Agreement, a reasonable rate or mechanism of compensation to be applied to such excluded traffic. All minutes of traffic carried by the connection should be compensated in some manner under the parties' Agreement. However, the Commission recognizes that ISP traffic is a special case, in that the Federal Communications Commission (FCC) has not yet issued its final rulemaking with respect to the treatment of such traffic. ISP traffic is discussed in more detail below.

D. How is InterMTA traffic to be defined (landline to mobile and mobile to landline)?

InterMTA traffic is traffic that crosses from one Major Trading Area (MTA) to another. Missouri is divided into two MTAs and one of the six counties in MMC's service area is in the eastern MTA, while the other five are in the western MTA. The Commission has determined that this traffic is to be excluded from local reciprocal compensation under the parties' Agreement.

The parties also disagree on the definition of such calls. SWBT contends that the origination point of a cellular-to-landline call must be determined by the location of the originating cell at the start of the call. SWBT characterizes this as the measurement method preferred by the FCC. MMC favors an alternative method, also approved by the FCC, in which the origination point of a cellular-to-landline call is determined by the location of the point of interconnection (POI) of the cellular and landline networks. See First Report & Order, CC Docket No. 96-98, released August 8, 1996, at ¶ 1044. SWBT responds that MMC is thereby attempting to define interMTA traffic out of existence; MMC counters that it lacks the technical ability to accurately determine the location of an originating cell in real time at the start of a cellular-to-landline call.

The Commission determines that the location of the originating cell at the start of such a call is to be determined by the location of the POI of the cellular and landline networks at the beginning of the call. This decision is driven by the technological limitations cited by MMC. SWBT had ample opportunity to present evidence of a technical nature in rebuttal, but apparently elected not to do so.

E. Are calls to an ISP "local" for purposes of reciprocal compensation under this Agreement? If not, what compensation, if any, is due for calls to an ISP?

The Commission has determined that Internet Service Provider (ISP) traffic has been defined as more interstate than local traffic by the FCC in its Declaratory Ruling

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in CC Docket No. 96-98, issued on February 26, 1999. Such traffic is necessarily inappropriate for local reciprocal compensation under the parties' Agreement. Until such time as the FCC has exercised its primary jurisdiction with respect to ISP traffic, the Commission will not attempt to determine the amount of compensation, if any, that should be paid with respect to such traffic.

The parties' Agreement shall provide that compensation for ISP traffic will be paid as provided by FCC rule and that no compensation shall be paid pending final rulemaking by the FCC. The parties' Agreement shall further provide that the parties will track such traffic, by an exclusion factor or some other means, and that compensation will be paid, from the effective date of the parties' Agreement, when the FCC's final rulemaking is promulgated.

ISSUE 3: APPORTIONMENT/SHARING OF COSTS—TRUE-UP

A. How should the cost of a Type 2B facility be apportioned or shared between the parties and what portion of the facility cost should be shared?

The parties are in agreement that costs will be shared based upon traffic volume percentages. The one remaining area of disagreement relates to SWBT's end offices at Boonville and Fayette. SWBT states that these end offices are remotes dependent upon its Kirksville end office and that it is not technically feasible for MMC to connect directly to either of these end offices by a Type 2B trunk connection. SWBT maintains that a trunk line must instead be run to Kirksville, over a hundred miles away. SWBT offers to share a proportion of the cost involved in implementing this facility. MMC, in turn, suggests that connecting at the Boonville and Fayette remotes might indeed be technically feasible and, if it is not, then SWBT must bear all of the expense of running a trunk line to Kirksville.

Under the Act, SWBT must permit MMC to interconnect wherever it is technically feasible to do so. 47 U.S.C. § 251(c)(2)(B). Again, only MMC favored the Commission with the testimony of a technical expert and SWBT must bear the consequences of its decision to withhold such testimony. The parties' Agreement shall provide that MMC may interconnect at SWBT's Boonville and Fayette end offices if such is indeed technically feasible. Under the Agreement, SWBT shall provide all necessary assistance to MMC in making that determination, including technical specifications of the remote end offices in question, and an opportunity for on-site inspections.

In the event that interconnection at the Boonville and Fayette remote end offices is not technically feasible, the parties shall share the cost of the trunk line to Kirksville, based on percentages of traffic volume.

ISSUE 5: RECIPROCAL COMPENSATION—EFFECTIVE DATE

A. Upon what date should the parties' obligation to pay reciprocal compensation begin?

B. If there is a reciprocal compensation obligation that began on July 14, 1998, when interconnection negotiations were requested, what should that rate be until the agreed upon reciprocal compensation rate becomes effective?

The Commission determines that the effective date for the local reciprocal compensation obligation under the parties' Agreement shall be the effective date of that Agreement. Thus, Issue 5B is moot. As for the Type 2B interconnection between MMC's Walnut Hill exchange and SWBT's Sedalia exchange, ordered by MMC long before the effective date of the parties' Interconnection Agreement, MMC must pay the fee set by SWBT's tariff until the effective date of the parties' Agreement.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of a party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of the issues before the Commission.

SWBT and MMC are duly licensed and certificated telecommunications carriers. MMC operates as a provider of wireless or cellular telecommunications services in six counties of west-central Missouri, to-wit: Johnson, Lafayette, Saline, Pettis, Howard, and Cooper. SWBT provides telecommunications services as an incumbent local exchange carrier in some of the approximately sixty landline telephone exchanges within MMC's service area.

SWBT received MMC's request for interconnection negotiations on July 14, 1998. Thereafter, on December 21, 1998, the 160th day following July 14, 1998, MMC filed its petition seeking arbitration by this Commission.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

MMC and SWBT are each a "telecommunications company" and a "public utility" within the intendments of Section 386.020(32) and (42), RSMo Supp. 1998, and therefore subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo.

The Commission is authorized by Section 252(b) of the Telecommunications Act of 1996, codified at 47 U.S.C. § 151 et seq., to arbitrate open issues between telecommunications carriers seeking to interconnect to an incumbent local exchange carrier, resolving each such issue by imposing appropriate conditions as required to

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implement Section 252(c) of the Act. The Commission's arbitration jurisdiction is dependent upon invocation by a party to the negotiations "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section[.]" 47 U.S.C. § 252(b)(1). The Commission concludes that its arbitration jurisdiction was timely invoked in this case.

The Commission's duty in an arbitration is to "resolve each issue . . . by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement[.]" 47 U.S.C. § 252(b)(4)(C). The Commission must complete the resolution of any unresolved issue "not later than 9 months after the date on which the local exchange carrier received the request under this section." *Id.* In this case, the Commission must complete the arbitration by April 14, 1999.

In resolving this matter, the Commission must comply with the arbitration standards set out at Section 252(c) of the Act, and:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The Commission has reviewed the Agreement submitted by the parties and concludes that it meets the requirements of Section 251 of the Act.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 15.1, 15.2, and Mid-Missouri Cellular's Response to late-filed Exhibit 15.1 are received into the record of this matter.
2. That the parties shall jointly draft and incorporate into their Agreement provisions embodying the resolution of each open issue as set out in this Order, filing an executed copy of the completed Agreement with this Commission for approval within twenty days of the effective date of this Order.
3. That the Agreement of the parties shall be implemented immediately upon approval by this Commission.
4. That this Order shall become effective on April 14, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

In the Matter of the Investigation into the Earnings of McDonald County Telephone Company.

Case No. TR-98-347

Decided April 8, 1999

Telecommunications §14. The Commission approved a revised stipulation and agreement regarding the earnings of a telephone company.

Evidence, Practice and Procedures §§8, 23, 30. Although two parties did not sign a stipulation and agreement, their failure to request a hearing constituted a waiver of their right to a hearing and permitted the Commission to treat the stipulation and agreement as unanimous.

ORDER APPROVING REVISED STIPULATION AND AGREEMENT

In May of 1997, the Staff of the Public Service Commission (Staff) began a per books review of the earnings of McDonald County Telephone Company (McDonald County). Staff's audit was based upon the twelve months ending December 31, 1996, updated for known and measurable changes occurring during 1997. Upon completion of its preliminary earnings analysis, the Staff began discussions with McDonald County. Staff and McDonald County entered into a Stipulation and Agreement that was filed with the Commission on February 13, 1998.

Along with the Stipulation and Agreement, on February 13, Staff and McDonald County filed a Motion to Open Docket. The Commission issued an Order Establishing and Giving Notice of Case on February 27. That order required that any party wishing to intervene in the case file an application to do so no later than March 30. Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T) filed timely applications to intervene and were made parties to this case by the Commission on April 10. The Commission adopted a procedural schedule and the parties filed testimony. A hearing was scheduled for November 6. On November 4, McDonald County filed a Motion to Cancel Hearing. That motion indicated that the parties had been able to agree upon a revised stipulation and agreement and asked that the hearing be canceled. The hearing was canceled by Order of the Commission issued on November 5.

On December 9, Staff, McDonald County and the Office of the Public Counsel (Public Counsel) submitted a Revised Stipulation and Agreement to supersede and replace the Stipulation and Agreement previously filed on February 13. The Revised Stipulation and Agreement was signed by Staff, McDonald County and Public Counsel. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, have the transcript read by the Commission and to judicial review. Staff filed suggestions in support of the Revised Stipulation and Agreement on January 19, 1999. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a

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resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The Revised Stipulation and Agreement states that the other parties in the case did not object to the revised stipulation. However, SWBT and AT&T did not sign the Revised Stipulation and Agreement. Because SWBT and AT&T did not sign the Revised Stipulation and Agreement, it must be treated as a Nonunanimous Stipulation and Agreement. 4 CSR 240.115(3) provides that after a nonunanimous stipulation and agreement is served on all the parties, "each party shall then have five (5) days from the receipt of the notice to file a request for hearing with the commission. Failure to file a timely request for hearing shall constitute a full waiver of the party's right to a hearing." SWBT and AT&T were served with a copy of the Revised Stipulation and Agreement on December 9, 1998. Neither company has filed a request for hearing. Therefore, SWBT and AT&T have waived their right to request a hearing.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

After reviewing the Revised Stipulation and Agreement, the Commission had some questions and, on March 18, issued an order directing Staff to file a supplemental memorandum to answer those questions. Staff filed the required memorandum on March 30. The Commission is now satisfied that the Revised Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Revised Stipulation and Agreement filed on December 9, 1998 by the Staff of the Public Service Commission, the Office of the Public Counsel and McDonald County Telephone Company is hereby approved (See Attachment 1).
2. That this order shall become effective on April 13, 1999.
3. That this case may be closed on April 14, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur.

Woodruff, Regulatory Law Judge

EDITOR'S NOTE: Attachment 1, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Assessment Against the Public Utilities in the
State of Missouri for the Expenses of the Commission for the
Fiscal Year Commencing July 1, 1998.***

*Case No. OO-99-44
Decided April 8, 1999*

Public Utilities §5. Staff's motion to revise public utility assessments for Fiscal Year 1999 would be granted.

**ORDER GRANTING STAFF'S MOTION TO REVISE PUBLIC UTILITY ASSESS-
MENTS FOR FISCAL YEAR 1999**

On February 10, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its Motion To Revise Public Utility Assessments For Fiscal Year 1999. Staff's motion comes as a result of the Commission's order in which it directed the Staff to recalculate the public utility assessments for fiscal year 1999 omitting the five-year averaging process and also omitting an amount of \$534,114 which was identified in the Report And Order as an Article X transfer.

On January 15 the Empire District Electric Company and UtiliCorp United Inc., d/b/a Missouri Public Service, filed a joint application for rehearing and stay. That application for rehearing was denied on February 17. More than thirty days have passed since the issuance of that order and no further action has been requested from the Commission nor has any party sought judicial review. Therefore, this matter may now proceed.

Attached to Staff's motion was 73 page attachment which set out in detail the increases or decreases for the affected utility companies which will take place as a result of the recalculation. No party has filed a response to the Staff's motion and the Commission has determined that Staff's recalculation complies with the directions set out in the Report And Order. Therefore, the Commission will approve Staff's motion.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission Staff's Motion To Revise Public Utility Assessments For Fiscal Year 1999 is granted.
2. That the Staff of the Missouri Public Service Commission is directed to bill or refund the difference to each affected company according to the Staff's recalculated assessments for fiscal year 1999.
3. That this order shall be effective on April 8, 1999.
4. That this case may be closed on May 10, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., Concur.

Roberts, Chief Regulatory Law Judge

*See pages 43 and 88 for other orders in this case. In addition, see pages 371 and 463, Volume 7, MPSC 3d for other orders in this case.

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**In the Matter of the Stipulation and Agreement Reducing the
Annual Missouri Retail Electric Revenues of Kansas City
Power & Light Company***

Case No. ER-99-313
Decided April 13, 1999

Electric §1. Evidence, Practice and Procedure §22. Intervention applications of GST Steel and City of Kansas City, Missouri denied because they either did not have an actual interest in the proceeding or did not have an interest that was not otherwise protected by the parties already a party to the action.

Electric §§1, 20. Evidence, Practice and Procedure §8. Rates §§37, 64, 104. The Commission found that the Stipulation and Agreement, which provided a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions, was reasonable and should be approved.

**ORDER DENYING INTERVENTION AND
APPROVING STIPULATION AND AGREEMENT**

On January 26, 1999, the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (Public Counsel), and Kansas City Power & Light Company (KCPL) filed their nonunanimous Stipulation and Agreement with the Commission in Case No. ER-99-313 and Case No. EM-97-515, requesting an order approving the Stipulation and Agreement. The parties requested this matter be given expedited treatment, with the Commission's order approving the proposed reduction effective March 1, 1999.

A Notice of Filing Stipulation and Agreement was also filed on January 26. Staff, Public Counsel and KCPL stated in their notice that all of the parties to Case No. EM-97-515, as well as Trigen-Kansas City and the Missouri Retailers Association, were given notice of the filing of the nonunanimous Stipulation and Agreement pursuant to the requirements of 4 CSR 240-2.115. The Stipulation and Agreement stated that Trigen-Kansas City and Missouri Retailers Association were not parties to Case No. EM-97-515 but are usually parties to KCPL's rate cases. Staff, Public Counsel and KCPL requested that all of the parties of record in Case No. EM-97-515, Trigen-Kansas City and the Missouri Retailers Association, be made parties to this case without the necessity of their filing for intervention.

The Stipulation and Agreement provides for a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions. This 3.2 percent decrease will approximately amount to a \$15 million decrease in revenues exclusive of license, occupation, franchise, gross receipts or other similar fees and

*The Commission, in an order issued on February 1, 2000, denied a rehearing in this case. On March 2, 2000, this case was appealed to Cole County Circuit Court (Case No. 00CV323303).

taxes. The signatories agreed that they will not file any case requesting (1) a general increase or decrease in KCPL's Missouri retail electric rates, or (2) rate credits or rate refunds prior to the earlier of September 1, 2001, or the closing of Western Resources-KCPL merger, unless an exceptional event occurs as defined by the Stipulation and Agreement. The signatories agreed that they would not request (1) a general increase or decrease in KCPL's Missouri retail electric rates, or (2) rate credits or rate refunds that would be effective for service rendered prior to March 1, 2002, or prior to one year after the closing of the Western Resources-KCPL merger, whichever occurs first. The Stipulation and Agreement clarifies various instances where this agreement applies and where exceptions exist.

On February 2, 1999, GST Steel Company (GST) filed its application to intervene as a party in this case. In its application, GST stated that it is a corporation duly authorized to conduct business in the state of Missouri with its principal place of business located at 7000 Roberts Road, Kansas City, Missouri 64125. It is a manufacturer and processor of steel within the area serviced by KCPL. GST stated that it is one of the largest consumers of KCPL's utility services. GST stated that it received notice of the agreement on January 26, 1999. Because GST is a special contract service customer of electrical services provided by KCPL, GST believes that its interests are markedly different from the general public. Parties to the special contract services are excluded from receiving a reduction. GST Steel also filed a request for hearing pursuant to 4 CSR 240-2.115(3) which requires the Commission to hold a hearing regarding a nonunanimous Stipulation and Agreement if requested by a party.

On February 4, the City of Kansas City, Missouri (Kansas City) filed its application to intervene with the Commission. Kansas City stated in its application that it had no objection to the Stipulation and Agreement and had notified the Commission by letter filed on January 28. Kansas City further stated in its application that it only sought intervention after GST Steel Company sought to intervene. The applicant stated that it wished to participate in the discussions and making recommendations to the Commission on the nature and scope of the proceedings. The applicant stated that as a municipality it is entitled to intervene.

On February 5, KCPL filed a motion for the issuance of a protective order stating that its response to GST's application to intervene and request for hearing contained highly confidential information which was filed under seal with the Commission. KCPL requested that a protective order be issued to protect its interest and the confidentiality of such materials and to facilitate the exchange of information between proper parties to the case. On March 16, the Commission issued an order granting protective order as requested by KCPL.

KCPL also filed its response to application to intervene and request for hearing on February 5. In its response, KCPL stated that GST's only apparent reason for objecting to the Stipulation and Agreement and requesting a hearing is that it will not share in the 3.2 percent reduction. KCPL further stated that GST, by virtue of its

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contract, could receive a share of the rate reduction if it chose to exercise the provision of a contract which would permit GST to elect at any time to be billed under the provisions of any applicable and generally available rate schedule. KCPL stated that GST has chosen not to receive a share of the rate reduction because its contract rates under the special contract services are significantly lower than the tariffed rates even after the 3.2 percent reduction. KCPL stated in its response that GST will not be affected negatively by approval of the Stipulation and Agreement and that GST has always had the option of bringing a separate action before the Commission to address issues related to its contract with KCPL.

On February 10, Public Counsel filed its motion regarding GST Steel Company's request for a hearing. Public Counsel stated that GST does not have a direct and current interest in KCPL's general rates because GST currently enjoys a special rate that is significantly lower than the tariffed rate, even after taking the proposed rate reduction into account. Further, Public Counsel's office stated that GST should not be permitted to unduly delay a reduction in rates that will apply to the vast majority of those customers that do not have the ability to enter into a special contract with their electric company.

On February 10, Staff filed a memorandum in support of the Stipulation and Agreement filed on January 26. Staff stated that it is appropriate to periodically change rates based on incremental costs to reflect changes in the incremental cost, such as daily for real time prices, at least every two years for avoided cost payments to qualifying facilities, but inappropriate to change rates based on incremental costs solely to reflect changes in embedded costs. The 3.2 percent decrease is not applied to special contracts and certain other items for this reason. The 3.2 percent decrease will not be applied to those rates and charges found on KCPL's rate schedules that are based on incremental costs, nor will the 3.2 percent decrease be applied to hourly real time prices, which are also based on incremental costs but do not appear on the rate schedules. The proposed equal percentage decrease to all tariffed rates and charges, except those specifically indicated, will maintain the rate design effectuated in Case No. EO-94-199, set in place just 30 months ago.

In addition, Staff stated that, even though Section 393.292, RSMo. (1994), permits single issue ratemaking respecting nuclear decommissioning, the signatory parties agreed not to request, or encourage or assist any request for an increase or decrease in KCPL's rates to reflect a change in the projected level or annual accrual of funding for decommissioning as a result of the decommissioning study required to be filed on September 1, 1999. 4 CSR 240-20.020(9).

As an attachment to its memorandum, Staff submitted to the Commission a letter from KCPL Assistant Chief Legal Officer William G. Riggins indicating that KCPL will begin an accrual on March 1 equaling a 3.2 percent reduction in KCPL's Missouri electric revenues, which will continue until the effective date of the Commission order ruling upon the Stipulation and Agreement as agreed by the signatory parties. If the Commission's order approves the Stipulation and Agreement, KCPL's customers

will receive an equal percentage of the credit. If the Commission's order does not approve the Stipulation and Agreement as filed, the accrual will be reversed.

On February 10, Staff also filed its Motion For A Commission Order Directing GST Steel Company To File A More Definite Statement Of Its Issues And For A Commission Order Setting A Procedural Schedule. Staff stated that GST has not conformed to the requirements of 4 CSR 240-2.115(1) in that neither of the pleadings filed by GST on February 2 identified what issues GST is requesting to be heard by the Commission. Because time is of the essence respecting the Stipulation and Agreement, Staff requested that the Commission set a procedural schedule.

Correspondence indicating no objection to the Stipulation and Agreement was received from the following parties to Case No. EM-97-515 between January 28 and February 18: Kansas Electric Power Cooperative, UtiliCorp United Inc., St. Joseph Light & Power Company, The Empire District Electric Company, City of Kansas City, Missouri, State of Missouri, ex rel. Attorney General Jay Nixon, United States Department of Energy.

On February 22, GST filed its response to Public Counsel's and Staff's motions. In its pleading, GST stated that it is not necessarily challenging the amount or the distribution of the rate reduction agreed upon in the Stipulation and Agreement. GST stated that, as a special contract customer of KCPL, it does not share in the general rate reduction for tariffed customers agreed upon by the parties to the Stipulation and Agreement. GST stated in its pleading that simply because it does not receive a reduction through the Stipulation and Agreement should not mean that

- A) GST consequently loses rights it would otherwise have to participate before this Commission;
- B) the Staff and Public Counsel cease to be available to assist in protecting the interest of GST (or any other customer excluded from the application of a stipulation); nor
- C) GST's potential relief through any adjustment of the charges which have become unjust and unreasonable under its amended and restated power supply agreement with KCPL be placed at risk.

Further, GST stated that it is only seeking to assure that its available due process, statutory, and contractual rights are not bargained away by the parties to the Stipulation and Agreement. GST stated that the restrictions included in the Stipulation and Agreement limit the ability of Staff and the Public Counsel to participate in matters involving the rates not only of those retail customers that receive rate reductions as a result of the Stipulation and Agreement but also in matters relating to retail customers excluded from receiving the benefit of the Stipulation and Agreement, such as GST. It is this limitation that GST stated is unfair, unreasonably discriminatory and contrary to law. GST stated that the Stipulation and Agreement will preclude Staff and Public Counsel from taking any steps on their own to ensure the customers not covered by the Stipulation and Agreement continue to pay just

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and reasonable rates for electric service and that Staff and Public Counsel will not be able to offer assistance to these excluded customers. GST stated that it appears from its reading of the Stipulation and Agreement that Staff and Public Counsel will be prohibited from participating in any audit of KCPL that GST might undertake pursuant to its rights under its contract with KCPL. Therefore, GST requests that the Commission order Staff, Public Counsel and KCPL to revise their Stipulation and Agreement to clarify that retail electric customers of KCPL that are specifically excluded from the Stipulation and Agreement shall not have their rights to participate before the Commission impinged in any way and that the Staff and Public Counsel shall be free to join with and/or assist those customers which are excluded as they see fit, in accordance with the law.

On March 1, KCPL filed its reply to GST's response which was filed on February 22. KCPL stated in its reply that since GST is not a party to the Stipulation and Agreement, this Stipulation and Agreement between KCPL, Commission Staff and Public Counsel cannot bind GST in any way or take away any rights that GST would otherwise have to raise issues before the Commission. KCPL stated that it does not believe that the Stipulation and Agreement would prohibit the Commission Staff or the Public Counsel from providing GST any assistance that customers would be entitled to expect from these State agencies. KCPL stated further that the Stipulation and Agreement does not restrict the Commission from reviewing GST's arguments concerning potential rate reductions or refunds. In order to resolve GST's concerns, KCPL specifically waived any objection that could be raised by it regarding the Commission Staff or Public Counsel providing assistance to GST in resolving issues related to GST's special contract with KCPL. KCPL also waived any objection it may have to the Commission exercising its jurisdiction to review GST's arguments and evidence related to GST's special contract with KCPL. Given these assurances and waivers, KCPL stated that there is no need to grant GST an evidentiary hearing at this time or otherwise delay the Commission's evaluation of the Stipulation and Agreement.

On March 15, GST filed a Request For Emergency Relief And Investigation. GST requested that the Commission take immediate steps to protect GST from exposure to unjust and unreasonable charges for electric service. GST further requested that the Commission investigate the prudence and reliability of KCPL's operation of its generating units and transmission and distribution system, including the recent explosion at KCPL's Hawthorn Generating Unit No. 5 (Hawthorn). Alleging KCPL's excessive and mounting reliability problems, and KCPL's lack of focus on the issue of reliability, GST requested that the Commission investigate the causes of the Hawthorn incident and take action to ensure that the causes of the Hawthorn explosion are not repeated. GST also requested that the Commission prohibit KCPL from passing through to its customers, either directly or indirectly, replacement power costs rising from KCPL's imprudence pertaining to the Hawthorn explosion. GST asked that the Commission investigate the reliability problems plaguing the

operation of the remainder of KCPL's system to determine whether KCPL has likewise been imprudent and negligent in the operation of other components of the system. GST also asked the Commission to require KCPL to remove Hawthorn from its rate base during its period of reconstruction because it is not "used" and "useful," and that the Commission deny recovery to KCPL for all cost associated with Hawthorn's reconstruction attributable to KCPL's failure to utilize prudent utility practice.

On March 18, KCPL filed Its Response To Request For Emergency Relief And Investigation. On March 23, Staff filed its Reply To The Response Of GST Steel Company And GST's Request For Emergency Relief And Investigation. On March 24, Public Counsel filed its Response To GST's Request For Emergency Relief And Investigation. KCPL recommended that GST's request be denied by the Commission, Staff recommended that the Commission schedule an expedited conference to discuss GST's concerns and possibly resolve the matter without further contested proceedings, and Public Counsel requested that the Commission dismiss GST's request and approve the proposed Stipulation and Agreement. On April 12, 1999, GST filed its reply to the responses of KCPL, Staff, and Public Counsel to its Request for Emergency Relief and Investigation. GST also filed a Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company.

The Commission finds that the Request For Emergency Relief And Investigation filed by GST is not related to the Stipulation and Agreement which is the subject matter of Case No. ER-99-313. GST's Request For Emergency Relief And Investigation filed on March 15, 1999 shall be stricken on the Commission's own motion. If GST wishes to pursue this request further, its request must be refiled with the Commission appropriately.

Under 4 CSR 240-2.075, the Commission may permit intervention on a showing that

- A) the applicant has an interest in the proceeding which is different from that of the general public;
- B) the applicant is a municipality or other political subdivision;
- C) granting the proposed intervention would serve the public interest; or
- D) applications being filed after the intervention date set by the Commission may be granted upon a showing of good cause.

An application to intervene must also state the applicant's interest in the proceeding and reasons for seeking intervention as well as whether the applicant supports or opposes the relief sought. 4 CSR 240-2.075.

The applicants for intervention, one of which has already indicated its support of the Stipulation and Agreement, do not have an interest in this proceeding and therefore the applications to intervene filed by GST Steel Company and the City of Kansas City, Missouri, shall be denied. Further, the Commission finds that it is not

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in the public interest to join any of the parties to Case No. EM-97-515, Trigen Energy Corporation or the Missouri Retailers Association, to this case. Because it is not a party in this case, GST's Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company will be denied.

The Commission finds that the Stipulation and Agreement filed by the signatory parties is reasonable. The Commission finds that the Stipulation and Agreement should be applied to the signatory parties but in no way restricts any non-signatory parties. Further, Staff and Public Counsel are not restricted from assisting or participating in actions which are raised by nonsignatory parties except for those that are strictly and narrowly specified in the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the applications for intervention filed by GST Steel Company on February 2, 1999 and by the City of Kansas City, Missouri on February 4, 1999 are denied.
2. That the request for hearing filed by GST Steel Company on February 2, 1999 is denied.
3. That Staff's motion for a Commission order directing GST Steel Company to file a more definite statement of its issues and for a Commission order setting a procedural schedule filed on February 10, 1999 is denied.
4. That GST Steel Company's Request For Emergency Relief And Investigation filed on March 15, 1999 is stricken from this case.
5. That GST Steel Company's Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company filed on April 12, 1999, is denied.
6. That the Stipulation and Agreement filed with the Commission on January 26, 1999 by the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, and Kansas City Power & Light Company is approved, except that the signatory parties' request that permit the parties in Case No. EM-97-515, Trigen Energy Corporation, and the Missouri Retailers Association to be made parties to this case is denied.
7. That this order shall become effective on April 23, 1999.
8. That this case may be closed after April 26, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Register, Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of Laclede Gas Company's Tariff Sheets to be
Reviewed in its 1995-1996 Actual Cost Adjustment.***

Case No. GR-96-181

Decided April 20, 1999

Gas § 23. The Commission found that revenue received from off-system sales of gas was not, under the terms of the tariffs, required to flow through the Actual Cost Adjustment process.

APPEARANCES

Michael C. Pendergast and Thomas M. Byrne, Attorneys at Law, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Douglas E. Micheel, Senior Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65101, for the Office of the Public Counsel and the Public.

R. Blair Hosford, Assistant General Counsel, Post Office Box 360, Jefferson City, Missouri, for Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Lewis R. Mills, Jr.

REPORT AND ORDER

Procedural History

This case was created to review the actual gas costs of Laclede Gas Company (Laclede) during the 1995-1996 Actual Cost Adjustment (ACA) period for the purpose of establishing Laclede's ACA factor. Upon its examination of the costs and revenues during that period, the Staff of the Commission (Staff) recommended that Laclede's ACA balance be adjusted by including \$3,569,843¹ in additional revenue. Staff believes that the proceeds from off-system sales of gas should be included in the ACA as an offset to Laclede's cost of gas. Staff proposed no other adjustments; the Office of the Public Counsel (Public Counsel) supports this adjustment and Laclede opposes it. Accordingly, the only issue presented to the Commission is whether Laclede's accounting of the proceeds from these off-system sales was appropriate and consistent with its tariffs.

*The Commission, in an order issued on May 18, 1999, denied an application for rehearing in this case.

¹ Staff's proposed adjustment would increase the Firm Sales ACA balance by \$3,554,727 to an over-recovery balance of \$29,379,755 and increase the Interruptible Sales ACA balance by \$15,116 to an over-recovery balance of \$62,440.

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Discussion

The Commission will address this issue by first determining whether Laclede's then-effective tariffs required the off-system sales revenues to be flowed through to ratepayers. If so, then Laclede's failure to do so was improper. If not, then the arguments of Staff and Public Counsel that the revenues must be flowed through in the absence of any requirement in the tariff will be examined. Much of the argument advanced by Public Counsel and Staff depends on the question of whether the revenues from off-system sales should be addressed in the Purchased Gas Adjustment (PGA) and ACA process or in the rate case process. For example, Public Counsel asserts that Laclede "is not supposed to be allowed to profit from its sales of gas subject to the PGA/ACA." While this may be a valid argument, it is moot if the profits at issue are not from sales of gas subject to the PGA/ACA.

The PGA/ACA process was designed to ensure that a local distribution company charges its customers no more and no less than it paid for the gas it bought to serve them. The situation here (an LDC buying gas with the intent of selling it to someone other than its customers) was not contemplated when the PGA/ACA process was established.

Nowhere in Laclede's tariffs² was the revenue from off-system sales expressly mentioned. Public Counsel and Staff cite two tariff provisions that allegedly require the profits from these sales to be included in the ACA process: P.S.C. Mo. No. 5 Consolidated, Third Revised Sheet No. 15, paragraph A, and P.S.C. Mo. No. 5 Consolidated, Fifth Revised Sheet No. 20, paragraph C.

Sheet 15, paragraph A, states in part:

In the event of increases or decreases in the cost of purchased gas, charges for gas service contained in the Company's then effective retail rate schedules on file with the Missouri Public Service Commission (Commission) shall be increased or decreased by a Current Purchased Gas Adjustment (CPGA). The cost of purchased gas shall include but not be limited to all charges incurred for gas supply, pipeline transmission and gathering, contract storage, and related agency services.

Although this language is expansive, it refers to costs, not revenues, and so is of no relevance to the question presented here.

Sheet 20, paragraph C, states in part:

The Company shall maintain Deferred Purchased Gas Cost Account(s) which shall be credited by the amount of any gas cost revenue recovery in excess of actual purchased gas costs and debited by the amount of any gas cost revenue recovery which is less than said actual purchased gas costs.

² References to Laclede's tariffs are to the tariffs in effect during the ACA period at issue.

Public Counsel and Staff argue that this reference to “any gas cost revenue recovery” mandates the crediting of the revenues from the off-system sales. The Commission disagrees. Gas cost revenue recovery is precisely calculated in the tariffs, once for sales customers and once for transportation customers, and then added to the previous years balances (Fifth Revised Sheet 21, paragraphs C.3, C.4, and C.6.). Staff and Public Counsel discourse at length on the definition of “any,” but give short shrift to the meaning of the phrase “any gas cost revenue recovery.” Reading the tariffs as a whole, rather than simply focusing on the word “any,” leads to the conclusion that the phrase “any gas cost revenue recovery” means revenue from sales or transportation of gas to any class of customer. It does not mean revenue from any source in any way related to gas.

This conclusion is supported by the fact that the tariffs make no provision for the split of off-system sales revenues between classes. If the tariffs were intended to flow all revenue from all sources related to gas supply to customers, then they would need a mechanism to determine this split. For the only source of revenue other than sales or transportation of gas to Laclede’s customers (capacity release revenues), the tariffs clearly provide for the calculation of this split.

Staff and Public Counsel argue that the fact that, in the preceding ACA period, Laclede flowed approximately \$24,000 from six off-system sales transactions through the PGA/ACA shows that such flow through is the proper treatment. Laclede argues that both the nature of these earlier transactions and the relatively insignificant revenues received from them makes them wholly different from the ones at issue here. Laclede also argues that it chose not to “pick a fight” with Staff and Public Counsel over \$24,000. The Commission finds that Laclede’s treatment of the revenues from the off-system sales transactions in the preceding ACA period has no bearing on the issue herein.

Public Counsel argues that this Commission has followed the reasoning in a District of Columbia Court of Appeals case (DCC)³ to determine the proper treatment of utilities’ capital gains. The issue in this case is the proper treatment of revenues, not capital gains, and the Commission finds nothing of relevance in the DCC case or the Commission cases that followed it discussed by Public Counsel.

Because the Commission will not adopt Staff’s proposed adjustment, it need not address Laclede’s contention that the adjustment would constitute unlawful retro-active ratemaking.

Findings of Fact

Because of the nature of the gas supply contracts that Laclede entered into in order to be able to meet its customers’ needs on the coldest days, Laclede was able to purchase gas for the express purpose of reselling it at a profit. No party has

³Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir.1973) cert. denied sub. nom. Transit System, Inc. v. Central Democratic Commission, 415 U.S. 935 (1974).

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argued that Laclede was imprudent in entering into these contracts, in reserving the volumes of gas covered by the contracts, or in making the sales that generated the revenue at issue, and the Commission finds that Laclede acted prudently both in entering into the contracts and in making the off-system sales. Laclede entered into approximately 250 off-system sales transactions during the ACA period, with a total profit of \$3,569,843. Laclede did not treat these profits as revenue to be flowed through the PGA/ACA process, but retained them as earnings.

Laclede also made six off-system sales in the preceding ACA period and flowed the revenue from them to customers. These sales were made for operational reasons to avoid penalties.

Conclusions of Law

Laclede is a public utility engaged in the provision of natural gas service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

The controlling issue herein is decided on the basis of Laclede's tariffs. Tariffs approved by this Commission have the same force and effect as a statute directly prescribed from the legislature. *Allstates Transworld Vanlines, Inc. v. Southwestern Bell Telephone Co.*, 937 S.W.2d 314 (Mo.App. E.D. 1996).

IT IS THEREFORE ORDERED:

1. That the proposal of the Staff of the Commission to adjust Laclede Gas Company's Actual Cost Adjustment balance by including \$3,569,843 in additional revenue is rejected.
2. That the 1995-1996 Firm Sales Actual Cost Adjustment balance shall be an over-recovery balance of \$25,825,028.
3. That the 1995-1996 Interruptible Sales Actual Cost Adjustment balance shall be an over-recovery balance of \$47,324.
4. That this order shall become effective on April 30, 1999.
5. That this case may be closed on May 3, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Crumpton, C., absent.

**In the Matter of the Application of United Water Missouri, Inc. for
an Accounting Authority Order Relating to FAS 106***

*Case No. WA-98-187
Decided April 20, 1999*

Accounting §42, Water §32. An Accounting Authority Order is a device by which the Commission gives authorization to a utility to account for a cost in a different manner than called for by the Uniform System of Accounts.

Accounting §42, Water §32. An Accounting Authority Order usually grants a utility the authority to capitalize certain costs on its books that would normally be charged to expense. This deferral allows the utility the opportunity to seek recovery of the capitalized costs in a subsequent rate proceeding.

Accounting §42, Water §32. It is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case. Therefore, deferral of costs from one period to a subsequent rate case should be allowed only on a limited basis.

Accounting §42, Water §32. In order to justify the issuance of an Accounting Authority Order to permit the deferral of such costs, the costs incurred by the utility must result from an event or circumstance that is extraordinary, unusual and unique, and not recurring.

Accounting §42, Water §32. Extraordinary costs would include costs associated with Acts of God such as storm damage, fire or flood. However, extraordinary costs might also include costs resulting from man-made decisions that result in significantly changed business conditions.

Accounting §§42, 39.1. A water utility's adoption of the FAS 106 accrual accounting standard was not an extraordinary expense that would justify the issuance of an Accounting Authority Order to permit the deferral of the excess of FAS 106 post-retirement benefits other than pension expenses over the pay-as-you-go amount that the utility had been booking since 1994.

APPEARANCES

Dean L. Cooper, Attorney at Law, Brydon, Swearngen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for United Water Missouri, Inc.

Stephen M. Gunn, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

John B. Coffman, Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

REGULATORY LAW JUDGE: Morris L. Woodruff

*The Commission, in an order issued on May 18, 1999, denied an application for reconsideration or rehearing and clarifying Report & Order. On June 16, 1999, this case was appealed to Cole County Circuit Court (Case No. CV199-792cc).

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REPORT AND ORDER

Procedural History

On November 5, 1997, United Water Missouri, Inc. (UWM) filed an Application for Accounting Authority Order. UWM sought accounting authority to recognize as a deferral the excess of FAS 106 post-retirement benefits other than pension (“PBOP”) expense over the pay-as-you-go amount, which UWM has been booking since 1994. On February 4, 1998, the Commission issued an Accounting Authority Order that approved in part and denied in part UWM’s application. The Commission’s order authorized UWM to “maintain on its books its regulatory asset which represents the excess of its Financial Accounting Standard 106 Post-Retirement Benefit Expense Other Than Pensions over the pay-as-you-go amount that the United Water Missouri, Inc. has been booking since January 1, 1997, with said deferral continuing until the effective date of a Report and Order in the next general rate proceeding of United Water Missouri, Inc.”

In response to the Commission’s order, on February 17, 1998, the Office of the Public Counsel (Public Counsel) filed an Application for Rehearing or Reconsideration. On April 23, after considering Public Counsel’s application, the Commission issued an order granting in part Public Counsel’s Application for Rehearing. The Commission vacated its Accounting Authority Order of February 4, and granted a rehearing on the narrow issue of whether the costs that UWM seeks to defer are extraordinary in nature.

Staff, Public Counsel and UWM submitted testimony and an evidentiary hearing was held on August 20, 1998. The parties submitted initial briefs on September 18 and reply briefs on September 28.

Testimony Presented

Albert Candelfmo testified on behalf of UWM that the Financial Accounting Standards Board issued FAS 106 in December of 1990. FAS 106 prescribes the accounting for Post-Retirement Benefits Other Than Pensions (PBOP) and provides that PBOP benefits are to be accounted for under the accrual method rather than the cash basis (pay-as-you-go) accounting method. UWM did not, however, immediately adopt the accrual method required by FAS 106.

Candelfmo testified that the Missouri Public Service Commission initially opposed the use of accrual accounting for PBOPs and had disallowed the use of FAS 106 for ratemaking purposes. The Missouri Legislature disagreed with the Commission’s position on FAS 106 and in 1994 passed HB 1405, later codified as Section 386.315, RSMo. That section requires the Commission to recognize the use of FAS 106 for ratemaking purposes. Section 386.315, RSMo, went into effect on August 28, 1994.

UWM is a wholly-owned subsidiary of United Waterworks, Inc. which in turn is wholly owned by United Water Resources. United Water Resources merged with the former grandparent of UWM on April 22, 1994. UWM did not adopt FAS 106 until

December of 1994, after it had a chance to evaluate the position of the newly merged company. UWM had filed a rate case in March of 1994 and that case was heard in November of 1994. Therefore, at the time that UWM became aware of the increased expenses associated with converting to FAS 106, it was too late to have those expenses taken into account in the rate case. UWM began deferring those expenses in 1994 so that they could be preserved for consideration in its next rate case, which UWM asserts was its first opportunity to have those expenses considered as part of a rate base. Candelmo testified that the effects of adopting FAS 106 resulted in extraordinary costs to UWM, justifying the granting of the requested Accounting Authority Order.

Mark Oligschlaeger provided rebuttal testimony on behalf of the Staff. Oligschlaeger testified that UWM should not be granted the requested Accounting Authority Order because the PBOP benefits that UWM seeks to defer are typical and customary business activities of most utilities. They are not unusual or infrequent expenses that would qualify as extraordinary and justify the issuance of an Accounting Authority Order.

Russell W. Trippensee provided rebuttal testimony on behalf of the Public Counsel. Trippensee testified that UWM should not be granted the requested Accounting Authority Order because UWM's adoption of FAS 106 is not an extraordinary event that would justify the issuance of an Accounting Authority Order.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

UWM asks that the Commission issue an Accounting Authority Order to allow it to recognize as a deferral the excess of FAS 106 PBOP expense over the pay-as-you-go amount. UWM has been booking this deferral since 1994 without approval from the Commission and it asks that the Commission recognize this deferral back to 1994. The only issue before the Commission is whether the costs that UWM seeks to defer are extraordinary in nature. The Commission finds that they are not.

The Commission has adopted the Uniform System of Accounts for the electric, gas, water, sewer and telephone utilities under its jurisdiction. An Accounting Authority Order is a device by which the Commission gives authorization to a utility to account for a cost in a different manner than called for by the Uniform System of Accounts. An Accounting Authority Order usually grants a utility the authority to capitalize certain costs on its books that would normally be charged to expense. This deferral allows the utility the opportunity to seek recovery of the capitalized costs in a subsequent rate proceeding.

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It is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case. Therefore, deferral of costs from one period to a subsequent rate case should be allowed only on a limited basis. In order to justify the issuance of an Accounting Authority Order to permit the deferral of such costs, the costs incurred by the utility must result from an event or circumstance that is extraordinary, unusual and unique, and not recurring. See. In re The Application of Missouri Public Service for the Issuance of an Accounting Authority Order, 1 Mo. P.S.C. 3d 200, 205 (1991). Extraordinary costs would include costs associated with Acts of God such as storm damage, fire or flood. However, extraordinary costs might also include costs resulting from man-made decisions that result in significantly changed business conditions.

PBOP expenses are both typical and customary business activities of most utilities. There is nothing extraordinary about such costs. However, UWM argues that while the costs themselves are not extraordinary, the circumstances under which it had to change its method of accounting for those costs are extraordinary.

In the past, utilities usually accounted for PBOPs on a cash, pay- as-you-go, basis. The utilities recovered those costs in rates on the same basis. When FAS 106 was issued in 1990, it required that utilities change to an accrual method of accounting for PBOPs. This required that the expenses be booked when the expenses are estimated to be earned, not when the benefit is to be paid out. Initially, the Commission rejected requests by several utilities to base their rates on FAS 106 treatment of PBOP costs. However, in 1994 the Missouri Legislature enacted Section 386.315, RSMo, which required the Commission to use FAS 106 for rate purposes if such amounts were externally funded by the utilities and the actuarial estimates upon which FAS amounts are based were judged to be reasonable. The statute also allowed utilities whose earlier requests for rate treatment of FAS 106 were rejected by the Commission a limited opportunity to make a one-issue rate filing with the Commission to recover those amounts.

The circumstances surrounding UWM's adoption of the FAS 106 accounting standard is complicated by the fact that UWM emerged from a merger at approximately the same time. UWM is a wholly-owned subsidiary of United Waterworks, Inc., which in turn is wholly-owned by United Water Resources. UWM's predecessor company in Missouri was Capital City Water Company whose ultimate parent was General Waterworks Corporation. On April 22, 1994, General Waterworks Corporation merged with United Water Resources. Prior to the merger, neither Capital City Water Company nor General Waterworks Corporation had adopted FAS 106. Capital City Water Company, later to become UWM, filed a rate case in March, 1994, prior to the merger. Capital City Water Company (UWM) did not request recovery of FAS 106 expenses in its rate filing and no FAS 106 expense was reflected in the cost of service in the Commission's Report and Order resulting from that rate case (Case No. WR-94-297). UWM argued that due to the circumstances of the merger, it did not realize that it would have additional expenses resulting from the change to the

accounting method required by FAS 106 until after those additional expenses could have been considered in the rate case.

UWM argued that the adoption of FAS 106 did result in extraordinary costs that should be recognized with an Accounting Authority Order. UWM points out that FAS 106's mandate of a change from a cost to an accrual method of accounting is a one-time only occurrence. While it is certainly true that this change in accounting methods is likely a one-time only event that will not recur, that circumstance meets only part of the Commission's concept of an extraordinary expense. There is no reason to believe that UWM's decision to adopt FAS 106 was in any way extraordinary. FAS 106 was issued in 1990 and did not become effective for most entities until January of 1993. Certainly the management of UWM, whether or not it was going through a difficult merger, could have seen these accounting changes coming and taken appropriate steps to ensure that the company's appropriate costs were considered by the Commission when establishing its rates. UWM, or its premerger predecessor Capital City Water, chose not to request consideration of FAS 106 accrual accounting in its 1994 rate case. It now appears that its decision was unwise. However, UWM's lack of foresight, even if understandable given the confusing circumstances of the merger, does not justify the issuance of an Accounting Authority Order.

UWM also argues that the extraordinary nature of the accounting changes required by FAS 106 is indicated by the fact that the legislature enacted Section 386.315, RSMo, to require the Commission to consider such costs in ratemaking. While the fact that the legislature found it necessary to pass a law to direct the Commission in its ratemaking is unusual, the statute concerns ratemaking and does not directly apply to a request for an Accounting Authority Order. It does not justify the issuance of an Accounting Authority Order.

The expenses for which UWM seeks an Accounting Authority Order are not extraordinary, unusual and unique and do not qualify for an Accounting Authority Order under the Commission's standards. Therefore, UWM's request for an Accounting Authority Order will be denied.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

United Water Missouri, Inc. is a water corporation as defined under Section 386.020(58), RSMo Supp. 1998.

United Water Missouri, Inc. is an investor-owned public utility engaged in the provision of water service in the State of Missouri and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, RSMo.

Orders of the Commission must be based upon competent and substantial evidence on the record. Section 536.140, RSMo (1994).

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Based upon its findings of fact and conclusions of law, the Commission concludes that United Water Missouri, Inc.'s Application for Accounting Authority should be denied.

IT IS THEREFORE ORDERED:

1. That the Application for Accounting Authority Order filed by United Water Missouri, Inc. on November 5, 1997 is denied.
2. That this Report and Order shall become effective on April 30, 1999.
3. That this case may be closed on May 3, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994
Crumpton, C., absent

**In the Matter of Missouri Gas Energy's Application for Variance
from Sheet Nos. 22 and 23 Pertaining to Processing of Certain
Kansas Ad Valorem Tax Refunds for the Large Volume Customer Class.**

Case No. GO-98-500
Decided April 20, 1999

Evidence, Practice and Procedure §8. Gas §17.1. Rates §§37, 44, 65. The Commission approved the unanimous stipulation and agreement, granting a variance of MGE's Tariff sheet numbers 22 and 23, which allowed MGE to distribute ad valorem tax refunds for years 1983 to 1988 by refunding 71.73 percent of all Kansas ad Valorem refunds to residential, small general service, large general service and unmetered gaslight customer classes through the PGA procedure and refunding 28.97 percent of all refunds to large volume customer class on the same basis as the Donkin Low method used to allocate refunds to large volume users in Case No. GR-91-286.

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Missouri Gas Energy (MGE) filed an application for a variance from sheet Nos. 22 and 23 of its tariff regarding the processing of certain refunds to large volume customer class on May 5, 1998. On May 11, 1998, an application for intervention was received from Midwest Gas Users Association (MGUA). On June 4, 1998, the Commission issued its Order Directing Notice and Granting Intervention to MGUA.

On September 11, 1998, Staff of the Commission (Staff) filed a memorandum recommending the following:

- 1) MGE be granted a one-time variance;

- 2) MGE be allowed to delay the refunds until 30 days after the effective date of the order authorizing the variance with interest accruing on the refund;
- 3) MGE's firm sales customers will receive 72.14 percent of the Kansas ad valorem taxes for the period of 1983 through 1988 through MGE's Purchased Gas Adjustment (PGA) tariff; and
- 4) the Wyoming Tight Sands (WTS) volumes may be used to distribute the refunds to the individual Large Customers.

On September 25, 1998, MGUA filed its response to Staff's recommendation and requested a prehearing conference be scheduled. On October 13, 1998, Ford Motor Company filed its Application to Intervene and also requested a prehearing conference. On February 16, 1999, the Commission issued its order granting intervention to Ford Motor Company and scheduling an early prehearing conference for March 3, 1999. On March 2, 1999, the Commission was advised that the parties had reached an agreement in this case and the prehearing conference was canceled.

On March 3, 1999, MGE filed a Motion for Protective Order which was granted by the Commission on March 16, 1999. The parties also filed their Unanimous Stipulation and Agreement on March 3, 1999. The Unanimous Stipulation and Agreement stated that MGE has received, and will likely continue to receive, refunds from Williams Natural Gas (Williams) as a result of action taken by the Federal Energy Regulatory Commission (FERC) in various dockets regarding Kansas ad valorem taxes. Because the refund periods at issue cover 1983 to 1988, MGE is unable to locate the individual customer data which corresponds to all of the various refund periods that is necessary to process the refunds for large volume customers as required by sheet No. 23 of MGE's tariff. The parties stated that MGE received certain of these refunds on February 2, 1998, and has been unable to process these refunds for large volume customers within 90 days of receipt as required by sheet No. 22 of its tariff. Therefore, variance from the requirements of tariff sheet No. 22 and No. 23 is required.

The parties agreed to the terms and conditions upon which the refunds shall be made in the Unanimous Stipulation and Agreement. The parties have agreed that all Kansas ad valorem refunds received, now or in the future, by MGE from Williams will be refunded to the customers issuing 71.73 percent of the refunds to residential, small general service, large general service and unmetered gaslight customer classes and issuing 28.27 percent of the refunds to the large volume customer class. Refunds to the residential, small general service, large general service and unmetered gaslight customer classes are to be processed through the PGA procedure as set forth in sheet Nos. 21 and 22 of MGE's tariff.

The Unanimous Stipulation and Agreement stated that MGE reported that it began processing Kansas ad valorem tax refunds to these customer classes with the PGA filing that became effective on April 1, 1998 on the basis of a 65.115 percent allocation. If the Commission approves this Unanimous Stipulation and Agreement,

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MGE will process the remaining allocation of Kansas ad valorem tax refunds in MGE's possession to these customer classes with the effectiveness of MGE's next PGA filing. The remaining allocation for these classes is the difference between 65.115 percent and 71.73 percent of the Kansas ad valorem tax refunds.

Individual Kansas ad valorem tax refunds to members of the large volume customer class will be made on the basis of the same Donkin Low method used to allocate the initial lump sum refunds of WTS anti-trust settlement proceeds approved by the Commission in Case No. GR-91-286. The allocation factors to be used for each customer are set out in the highly confidential Attachment No. 1 to the Unanimous Stipulation and Agreement. The refunds to the large volume customer class will be made by check except that the agreement provides that MGE will be permitted to deduct any customer's delinquent bill or bad debt before making a refund to that customer, that MGE will charge an administrative fee of \$50 per customer which shall be deducted from the large volume customer's refund and retained by MGE, and that any customer with a refund amount of less than \$50 will not receive a refund.

In the event that MGE is unable to make a refund to a large volume customer, even after consultation with representatives of MGUA, those unreturned amounts shall be credited to the large volume refund account, retained until such time as a subsequent refund is received from MGE's suppliers and added to subsequent refund before distribution to large volume customers. The Unanimous Stipulation and Agreement stated that if, after consultation with MGUA, MGE is unable to locate that particular large volume customer to make a refund, MGE shall have no further obligation to attempt to locate such customer for the processing of subsequent Kansas ad valorem tax refunds.

The parties also agreed that the Kansas ad valorem tax refunds received by MGE prior to Commission approval of this Unanimous Stipulation and Agreement will have interest applied at the rate of six percent per annum for the period of time between MGE's receipt of the funds and MGE's issuance of the refund checks. For Kansas ad valorem tax refunds received by MGE after Commission approval of this Unanimous Stipulation and Agreement, the parties agreed that if corresponding refund checks are not issued within 60 days of MGE's receipt of the Kansas ad valorem tax refunds, MGE shall not seek recovery of any interest differential on any interest paid to members of the large volume customer class on those refunds. The parties define interest differential as referring to either the positive or negative difference, if any, between the six percent interest rate applicable to any refund and the actual interest earned by MGE on the funds held during the applicable period. The Unanimous Stipulation and Agreement states that for Kansas ad valorem tax refunds received by MGE prior to Commission approval of the Unanimous Stipulation and Agreement, MGE may seek to recover any interest differential on any interest paid to the large volume customer class on such refunds and other parties reserve the right to oppose such recovery or to assert that any positive interest differential be credited to MGE's cost of service. The Unanimous Stipulation and Agreement does not specifically

state where MGE may seek to recover the Interest Differential but implies that such may be recovered in the next general rate proceeding.

The parties agreed that MGE will mail refund checks to the large volume customer class members within 30 days of the effective date of the Commission's order approving this Unanimous Stipulation and Agreement for those Kansas ad valorem tax refunds already in its possession. The parties agreed that for subsequent Kansas ad valorem tax refunds MGE may receive from Williams, MGE will mail refund checks to the large volume customer class members within 60 days of MGE's receipt of those refunds, provided that the amount to be refunded to the large volume customer class exceeds \$75,000 in the aggregate.

The Unanimous Stipulation and Agreement does not indicate how long MGE will retain the Kansas ad valorem tax refunds less than \$75,000 in the aggregate in the large volume refund account, or how those funds will be distributed in the end if they do not exceed \$75,000. The Commission finds that it would be reasonable for MGE to hold tax refunds less than \$75,000 in the aggregate until additional refunds are received that exceed \$75,000 in the aggregate for distribution at the same time. However, the Commission finds that is essential to determine what mechanism would be used if the tax refunds are resolved at the federal level and the amount to be refunded to the large volume customer refund account does not exceed \$75,000 in the aggregate. The Commission will order the funds remaining in the large volume refund account to be distributed to the large volume customer class even if it does not exceed \$75,000 in the aggregate when no further refunds are expected as a result of federal litigation involving the Kansas ad valorem taxes.

The Commission finds that good cause exists for granting MGE's application for variance from sheet Nos. 22 and 23 as it pertains to the processing of Kansas ad valorem tax refunds. Pursuant to Section 536.060 (RSMo 1994), the Commission accepts the Unanimous Stipulation and Agreement as resolution of the issues in this case. The Commission has reviewed the Unanimous Stipulation and Agreement, finds it to be reasonable and will approve it.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on March 3, 1999, by the parties, Attachment A to this order, is approved. Attachment A is a non-proprietary copy of the Unanimous Stipulation and Agreement. Attachment 1 to the Unanimous Stipulation and Agreement containing highly confidential information is not attached.
2. That Missouri Gas Energy shall distribute the funds remaining in the Large Volume refund account when no further Kansas ad valorem tax refunds are expected, and those funds shall be distributed in the same manner as agreed by the parties in the Unanimous Stipulation and Agreement, regardless of whether the amount of refunds exceed \$75,000 in the aggregate.
3. That this order shall become effective on April 30, 1999.
4. That this case may be closed after May 3, 1999.

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Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent

Register, Regulatory Law Judge

EDITOR'S NOTE: Attachment A, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of a Recommendation Concerning the Surcharge for Dual Party Relay.

Case No. TR-99-123
Decided April 20, 1999

Telecommunications § 14. The Commission found that the current Relay Missouri Surcharge amount and retention rates were just and reasonable and should not be adjusted at this time.

ORDER REGARDING RELAY MISSOURI SURCHARGE

The Missouri Public Service Commission ordered the implementation of the Relay Missouri program in Case No. TO-90-174. The Relay Missouri program is a statewide dual-party telephone relay service for the deaf, hearing-impaired and speech-impaired individuals, which was created pursuant to Section 209.253, RSMo 1994. The surcharge which funds this program is currently set at \$0.13 per month, per access line. Section 209.259, RSMo 1994, requires the Commission to review the surcharge periodically to ensure that necessary funds are available for the program. The Staff of the Commission (Staff) filed a Motion to Establish Docket on October 1, 1998, asking the Commission to open a docket for this purpose.

Along with its motion, Staff filed a memorandum as Exhibit A, recommending that the Commission continue the surcharge at the rate of \$0.13 per access line per month, not to exceed 100 access lines per customer per location. Staff suggests that the Commission continue to allow local exchange companies (both incumbent and competitive) to retain \$30 or one percent of the surcharge collected each month, whichever is greater. Staff also recommends that the Commission direct Staff to review the surcharge no later than two years from the effective date of its order in this case.

The Commission issued an order on November 3, 1998, establishing a docket to consider the issue and directing parties wishing to intervene to do so no later than

December 3, 1998, and to file their responses to Staff's recommendation no later than January 4, 1999. The Commission granted intervention to Southwestern Bell Telephone Company (SWBT) on January 12, 1999. Although intervention was granted after the deadline for filing responses to Staff's recommendation, SWBT did not request permission to file late comments, and no comments or responses were received.

The Commission has reviewed Staff's motion to open docket and recommendation and finds that the current Relay Missouri surcharge amount is just and reasonable. Missouri law requires the Commission to review these issues periodically, but allows review no more often than annually. § 209.259, RSMo 1994. Accordingly, the Commission will direct Staff to monitor the fund in light of the issues set out in its recommendation, conduct a review, and file a recommendation with the Commission no later than April 20, 2001.

IT IS THEREFORE ORDERED:

1. That the current Relay Missouri surcharge amount and retention rate are just and reasonable and shall not be adjusted at this time.
2. That the Staff of the Commission shall monitor the Deaf Relay Service and Equipment Distribution Program fund in light of the issues set out in its recommendation, conduct a review, and file a recommendation with the Commission no later than April 20, 2001.
3. That this order shall become effective on April 30, 1999.
4. That this case may be closed on May 3, 1999.

Lumpe, Ch., Drainer, Murray and Schemenauer, CC., concur.
Crumpton, C., absent.

Ruth, Regulatory Law Judge

**In the Matter of the Application of Imperial Utility Corporation for
Permission to Sell Certain Assets Used and Useful by It in the
Provision of Sewer Service to the Public to Rock Creek Public
Sewer District and to Cancel Its Certificates of Public Convenience and Necessity.**

*Case No. SM-99-287
Decided April 22, 1999*

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Sewer §4. The Commission authorized a sewer utility to sell substantially all of its assets to a public sewer district.

ORDER GRANTING MOTION TO WITHDRAW, CANCELING
PROCEDURAL SCHEDULE AND
APPROVING SALE OF SEWER SYSTEM ASSETS

On December 29, 1998, Imperial Utility Corporation (Imperial) filed an Application with the Commission seeking approval of the sale of substantially all its assets used in the provision of public utility service to Rock Creek Public Sewer District (Rock Creek), a political subdivision of the State of Missouri. Imperial's Application also asks that its certificate of public convenience and necessity be canceled. An Order and Notice was issued by the Commission on January 4, 1999, directing that interested parties be notified of the proposed transaction. The Order and Notice indicated that anyone wishing to intervene in this matter do so no later than January 15, 1999. On January 14, Munaco Development Company, Inc. (Munaco) and Money's Bldg. & Dev., Inc. (Money's) filed separate applications for intervention. Munaco and Money's were granted intervention by order of the Commission on January 27. An early prehearing conference was held on March 2, and a proposed procedural schedule was filed by the parties on March 16. On March 25, the Commission issued an Order Adopting Procedural Schedule. This matter was set for hearing on September 8, 9 and 10, 1999.

On April 19, Munaco and Money's filed a joint Motion to Withdraw Intervention. That motion indicated that Munaco and Money's have reached a separate agreement with Imperial and Rock Creek that renders their intervention moot. Munaco and Money's motion to withdraw will be granted by the Commission.

Following the withdrawal of the intervenors, the remaining parties filed a Motion to cancel the previously established procedural schedule as none of the remaining parties desire to present evidence at a hearing. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing, the Commission may grant the relief requested based on the verified application.

On April 21, the Staff of the Public Service Commission (Staff) filed a memorandum recommending that the Commission approve the sale of the sewer system assets. The memorandum indicates that Imperial was granted certificates of convenience and necessity in Case No. 17,825, and serves approximately 2,990 customers, almost all of whom are residential customers. Staff's memorandum indicates that Rock Creek currently operates a sewer collection and treatment system providing service to approximately 800 customers. As a political subdivision, Rock Creek is not subject to the Commission's jurisdiction.

Staff believes that Rock Creek has demonstrated that it has adequate technical, managerial and financial resources to provide sewer service to Imperial's present customers. In fact, Staff believes that the quality of service received by Imperial's customers will improve after the sale. Staff indicates that Rock Creek's acquisition of the Imperial system will not have a negative impact on that system, nor will it be detrimental to the public interest. Staff states that, in the long term, customer rates for service provided by Rock Creek will be lower than rates would have been for Imperial because of Rock Creek's superior ability to provide required improvements to the sewer system.

Staff suggests that Imperial's certificates and tariffs should not be canceled until after Imperial notifies the Commission that the sale has been completed. Staff also indicates that two formal complaints against the owners of Imperial are pending before the Commission in case numbers SC-99-134 and SC-99-135. Both Complaints allege that the owners of Imperial have failed to pay their Commission assessments for fiscal years 1997, 1998 and 1999. Staff recommends that the Commission prohibit the distribution of proceeds resulting from Imperial's asset sale until the assessment payment delinquencies of Imperial and House Springs Sewer Company are satisfied. With those limitations, Staff recommends that Imperial's Application be approved.

The Commission has considered the application of Imperial along with the recommendation of Staff and concludes that the application for sale of assets should be granted.

IT IS THEREFORE ORDERED:

1. That the Motion to Withdraw Interventions, filed by Munaco Development Company, Inc. and Money's Bldg. & Dev., Inc., is granted.
2. That the procedural schedule previously adopted in this case is canceled.
3. That Imperial Utility Corporation is authorized to sell, substantially all of its assets used in the provision of public utility service to Rock Creek Public Sewer District, a political subdivision of the State of Missouri, as described in its Application.
4. That upon the closing of the asset sale authorized by this order, Imperial Utility Corporation shall file a pleading notifying the Commission of the completion of the sale.
5. That the proceeds of the sale of the assets of Imperial Utility Corporation shall not be distributed to the owners of that corporation until such time as the assessment payment delinquencies involving both Imperial Utility Corporation and House Springs Sewer Company are satisfied.
6. That this order shall become effective on May 2, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent

Woodruff, Regulatory Law Judge

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**In the Matter of the Application of West Elm Place Corporation for
Permission to Sell Certain Assets Used and Useful by it
in the Provision of Sewer Services to the Public to Rock Creek
Public Sewer District and to Cancel its Certificates of Public
Convenience and Necessity.**

Case No. SM-99-193
Decided April 22, 1999

Evidence, Practice and Procedure §8. Rates §§18, 20, 32. Sewer §4. The sale of assets of West Elm Place Corporation, a regulated private public utility providing sewer services, to Rock Creek Public Sewer District, a political subdivision and unregulated entity, would not be detrimental to the public interest and is approved, even though the West Elm customers' costs will be higher because improvements requiring an investment of several million dollars will be necessary to comply with stringent limitations on effluent produced by West Elm's sewer system.

ORDER APPROVING SALE OF ASSETS

West Elm Place Corporation (West Elm) filed an application with the Commission on November 2, 1998, requesting an order authorizing the sale of certain assets used and useful in the provision of sewer services to the public to Rock Creek Public Sewer District (Rock Creek). West Elm also requested the Commission cancel its certificates of public convenience and necessity and tariffs. West Elm also filed a Motion for Expedited Treatment and Motion for Issuance of Protective Order on November 2. The Motion for Expedited Treatment was granted and the Commission issued its Order and Notice with a shortened time for intervention requiring filing by November 27. No interventions were filed. The Commission issued its Order Granting Motion for Protective Order on November 13.

The Applicant stated that West Elm is a Missouri corporation duly organized and existing under the laws of the state of Missouri with its principal place of business located at Arnold, Missouri. The application stated that West Elm is a public utility and a sewer corporation subject to the jurisdiction of the Public Service Commission. West Elm stated that it received certificates of public convenience and necessity to provide sewer service in Case No. 16,489, Case No. 17,456, Case No. SA-90-274, and Case No. SA-93-331. West Elm proposes to sell substantially all of its assets used in the provision of public utility service to Rock Creek, a political subdivision of the state of Missouri. These assets include all sewer lines, easements, real estate, treatment plants, vehicles, office and storage buildings, and related equipment and supplies. West Elm stated that as part of the sale transaction Rock Creek requested that West Elm's certificates of public convenience and necessity be canceled. Rock Creek Public Sewer District which is a political subdivision of the state of Missouri does not need a certificate. West Elm stated that it will discontinue sewer service

upon completion of this sale. The application stated that the transaction would not be detrimental to the public interest.

The Staff of the Commission filed its Memorandum on March 5, 1999, recommending approval of the sale of assets. Staff noted that customers' cost for services from Rock Creek would be higher than they currently are. Staff stated that the proposed sale of West Elm's assets to Rock Creek would result in substantial cost savings once West Elm's system is purchased and operated by Rock Creek. Staff recommended that the Commission approve West Elm's sale of assets to Rock Creek with three conditions: (1) require Rock Creek to adopt West Elm's rates until improvements are completed, (2) require direct notification to West Elm's customers of the terms and conditions of the contract, and (3) require West Elm to file formal notification of the closing of the sale of assets. On March 15, Staff filed a supplement to its earlier memorandum attaching a copy of the letter Staff sent to Rock Creek regarding its conditional recommendation.

On April 20, 1999, Staff filed its memorandum following additional negotiations and discussions with the parties to this case. Staff amended its previous position and recommended that the Commission approve the sale of West Elm's assets to Rock Creek requesting only that the Commission order West Elm to file formal notice with the Commission notifying the Commission when the sale has closed. Staff stated that, in the short term, customers of West Elm may be required to pay more than they are paying as customers of West Elm now. Staff also noted that the long term economic and environmental benefits from the sale of assets from West Elm to Rock Creek outweigh the short term concerns. Staff reported that stringent limitations on effluent produced by West Elm's treatment plants will require several million dollars of improvements to meet such limitations. As a political subdivision, Staff noted that Rock Creek could reduce costs by escaping taxation applicable to a private service provider and by financing improvements more efficiently through issuance of tax-exempt bonds. Staff also requested expedited consideration of this matter and that the Commission issue its order as soon as possible.

The Commission, having reviewed West Elm's application and Staff's memorandums, finds that the sale of assets is not detrimental to the public interest and will be approved. The Commission wishes to be assured that West Elm paid its Public Service Commission assessment owed to the Commission before its certificates and tariffs are canceled. The Commission will direct Staff to file a status report about the balance of West Elm's assessment owed to the Commission. West Elm will be ordered to file a pleading notifying the Commission of the closing of the asset sale. Upon receipt of such notification, the Commission will cancel West Elm's certificate and tariffs.

IT IS THEREFORE ORDERED:

1. That the application filed by West Elm Place Corporation on November 2, 1998, is approved.

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2. That West Elm Place Corporation is authorized to sell the assets set out in the Asset Purchase and Sale Agreement to Rock Creek Public Sewer District.

3. That West Elm Place Corporation shall file a pleading notice informing the Commission of the closing of the sale of assets.

4. That Staff of the Commission shall file a status report regarding the balance of the Public Service Commission assessment owed to the Commission by West Elm Place Corporation no later than April 27, 1999.

5. That this order shall become effective on May 2, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent

Register, Regulatory Law Judge

In the Matter of the Application of Union Electric Company d/b/a AmerenUE for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain Natural Gas Pipeline Facilities and a Gas Distribution System for the Public in a Portion of St. Charles County, Missouri, as an Expansion of Its Presently Certificated Area.

In the Matter of the Application of Laclede Gas Company for a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage, and Maintain a Gas Distribution System for the Public in a Portion of the City of Wentzville, Missouri, as an Expansion of Its Presently Certificated Area.

Case Nos. GA-99-107 & GA-99-236

Decided May 4, 1999

Gas §3. The Commission approved a stipulation and agreement that resolved conflicting applications for establishment of service areas by two gas utilities in and near Wentzville, Missouri.

ORDER APPROVING STIPULATION AND AGREEMENT

On September 15, 1998, Union Electric Company d/b/a AmerenUE (UE) filed an application for a certificate of public convenience and necessity for authorization to construct, own, and operate natural gas pipeline facilities and a gas distribution system for the public in a portion of St. Charles County. UE's application was assigned case number GA-99-107. On November 3, Laclede Gas Company (Laclede) was granted leave to intervene in the UE case. Laclede filed its own application, on November 24, for a certificate of public convenience and necessity to provide gas service to a portion of St. Charles County that overlaps the area for which UE seeks certification. Laclede's application was assigned case number GA-99-236. On December 3, the Commission issued an order consolidating the UE and Laclede applications into a single proceeding. The Commission granted intervention in the consolidated case to the City of Wentzville and allowed Missouri Pipeline Company to participate without intervention. A procedural schedule was adopted by the Commission on December 10 and this matter was set for hearing on March 17, 18 and 19, 1999.

On March 16, the parties filed a Motion to Suspend Procedural Schedule. In that motion the parties indicated that they had been able to reach a compromise agreement and that they expected to be able to file a Stipulation and Agreement that would resolve all the matters at issue. The Motion asked that the hearing be postponed. On March 16, the Commission issued an order canceling the hearing.

On April 13, UE, Laclede, the Staff of the Public Service Commission (Staff), the Office of the Public Counsel, and Missouri Pipeline Company filed a Stipulation and Agreement. The City of Wentzville did not sign the Stipulation and Agreement. However, on April 14, counsel for the City of Wentzville filed a letter indicating that the city does not oppose the Stipulation and does not intend to request a hearing. Therefore, pursuant to 4 CSR 240-2.115(1) the Stipulation and Agreement will be treated as a unanimous stipulation and agreement.

The Stipulation and Agreement indicates the parties' agreement that the Commission should issue a certificate of convenience and necessity to UE authorizing it to reinforce its existing Curryville to Wentzville feeder system by constructing and operating a natural gas pipeline in the general location set forth in Schedule 1 of the Stipulation and Agreement. The Stipulation and Agreement asks that the Commission divide the service areas near Wentzville between UE and Laclede as provided in schedules attached to the Stipulation and Agreement. Furthermore, the Commission is asked to issue Certificates of Convenience and Necessity to UE and Laclede to allow them to serve their respective service areas. Finally, prefiled testimony and schedules submitted by several witnesses are to be admitted into evidence without the necessity of those witnesses taking the stand.

On April 27, Staff filed suggestions in support of the Stipulation and Agreement. Staff indicates that UE currently is certificated to provide natural gas service to Wentzville and adjacent areas. Those adjacent areas are composed of portions of

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unincorporated St. Charles County. Laclede is also certificated to serve unincorporated St. Charles County. In order to avoid conflicting service claims from the two companies, the Staff supports the idea of drawing a firm dividing line between the service areas of the two gas companies. Such a service territorial boundary is described in the Stipulation and Agreement. Both companies now hold the necessary franchises from the City of Wentzville and St. Charles County to allow them to serve their agreed upon territories. Staff recommends that the Commission accept the Stipulation and Agreement and issue the requested Certificates of Convenience and Necessity.

In the Stipulation and Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, have the transcript read by the Commission and to judicial review. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on April 13, 1999 by Union Electric Company d/b/a AmerenUE, Laclede Gas Company, the Staff of the Public Service Commission, the Office of the Public Counsel, and Missouri Pipeline Company is hereby approved (See Attachment A).

2. That the prefiled testimony and schedules submitted by the following witnesses on behalf of Union Electric Company d/b/a AmerenUE, Laclede Gas Company, and the Staff of the Public Service Commission are received into evidence:

On Behalf of UE:

Robert W. Schmidt, Direct, Rebuttal and Surrebuttal

Stephen R. Colyer, Direct and Surrebuttal

Robert G. Nichols, Direct and Surrebuttal

Scott A. Glaser, Rebuttal

On Behalf of Laclede:

Benjamin O. McReynolds, Direct, Rebuttal and Surrebuttal

James K. Zeltmann, Direct, Rebuttal and Surrebuttal

Michael R. Spotanski, Direct, Rebuttal and Surrebuttal

On Behalf of Staff:

Randy L. Flowers, Rebuttal and Surrebuttal

James A Gray, Rebuttal and Surrebuttal

3. That a Certificate of Convenience and Necessity is granted to Union Electric Company d/b/a AmerenUE to construct, install, own, operate, control, manage and maintain natural gas pipeline facilities for the purpose of reinforcing and increasing the capacity of its existing gas distribution system in the Wentzville District Service Area. The general location of the natural gas pipeline is set forth in Schedule 1 attached to the Stipulation and Agreement. The precise location of the line is to be established as rights-of-way are secured by Union Electric Company d/b/a AmerenUE.

4. That a Certificate of Convenience and Necessity is granted to Union Electric Company d/b/a AmerenUE to provide natural gas service in unincorporated St. Charles County as described in Schedules 2 and 3 attached to the Stipulation and Agreement.

5. That a Certificate of Convenience and Necessity is granted to Laclede Gas Company to provide natural gas service in the City of Wentzville as described in Schedules 2 and 4 attached to the Stipulation and Agreement.

6. That a Certificate of Convenience and Necessity is granted to Laclede Gas Company to provide natural gas service in the following specific areas within the city limits of the City of Wentzville north of Interstate Highway 70:

- (a) The General Motors Assembly Plant site annexed into the city limits of Wentzville pursuant to Ordinance No. 741;
- (b) All customers of Laclede located in Wentzville which Laclede currently serves through the main that serves the General Motors Assembly Plant site; and
- (c) Future customers located in the areas of Wentzville that were annexed pursuant to Ordinance Nos. 760, 761, 762, 763, 764, 765, 766, 767, 769 and 771 that can be served through the main that serves the General Motors Assembly Plant Site, which ordinances, together with a map, are set forth in Schedule 5 attached to the Stipulation and Agreement.

7. Union Electric Company d/b/a AmerenUE and Laclede Gas Company shall file tariffs reflecting the changes approved in this Order no later than June 3, 1999. The tariffs shall reference these case numbers and shall briefly describe the territorial boundary lines established by this Order.

8. That this order shall become effective on May 14, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Woodruff, Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement (Attachment A) in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

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In the Matter of the Industry Report on the Elimination of Protected Codes in the 816 and 913 NPAs.

Case No. TO-99-439

Decided May 6, 1999

Telecommunications §§1, 8. The Commission adopted the industry recommendation that the Commission eliminate protected codes in the 816 area codes for those telephone exchange numbers also issued in the 913 area code, as a conservation method for telephone exchanges in the Kansas City metro calling area.

ORDER ADOPTING INDUSTRY REPORT AND RECOMMENDATION

On April 6, 1999, the Office of the Public Counsel (Public Counsel) filed an Application Requesting Expedited Acceptance and Approval of the Industry Report and Recommendation. This document was served on the parties to Case No. TO-96-1 which was closed on January 26, 1999 upon the request of the Staff of the Missouri Public Service Commission (Staff).

In its Application Requesting Expedited Acceptance and Approval of the Industry Report and Recommendations, Public Counsel indicated that elimination of the protected codes in the Kansas City metropolitan area was considered as a part of the NPA planning process. However, the technical committee decided to postpone elimination of protected codes until after the completion of the NPA relief projects for the 816/660 (Missouri) and 913/785 (Kansas) area codes. In support of this decision to defer the elimination of protected codes, Public Counsel referenced the report of the technical committee in Case No. TO-96-1 from October 1996.

Public Counsel stated that on January 5, 1999, the industry code administrator declared the 816 and 913 NPAs in jeopardy so that an allocation plan could be developed to ensure that all NXXs within an NPA were not assigned before the supply of NXXs could be replenished. Public Counsel stated that to replenish the supply of NXXs in both 816 and 913 NPAs, all protected codes must be eliminated.

Public Counsel stated in its application that the industry group recommends the elimination of the protected codes no later than December 4, 1999. The participants in developing the Industry Report included the following entities:

AT&T
Citizens Utility Ratepayer Board
MCIWorldcom
Lockheed Martin-NANPA
Southwestern Bell Wireless
Aerial Communications
Nextel
CellularOne

Mobil Radio Comm.
Grand River Mutual
GTE
Mobilephone
AT&T Wireless
Sprint
Southwestern Bell Telephone Company
Staff of the Missouri PSC
Staff of the Kansas Corporation Commission
Office of the Public Counsel

Public Counsel references the industry group's report which is attached to the application.

Public Counsel stated in its application that the Staff, Public Counsel and the industry group waive hearing on the matter and request expedited action as time is of the essence to begin technical changes, revise directories and conduct consumer education. No party except Public Counsel signed the application.

On April 15, 1999, the Commission issued its Order and Notice requiring any interested party to file its application to intervene no later than April 23, 1999.

On April 20, MCI Telecommunications Corporation (MCI), an MCI WorldCom Company, filed an application to intervene stating that it supports Public Counsel's application and that it does not seek a hearing. MCI stated that the Commission's decision will affect MCI's interests as a provider of interstate telecommunications services and that its interests are different than those of the general public. MCI stated that the intervention of MCI in this proceeding is in the public interest because of MCI's interests in enhancing competition, and because of its expertise in the telecommunications industry. No objections to this application for intervention were received.

On April 22, Southwestern Bell Telephone Company (SWBT) filed its application to intervene and stated that it does not oppose Public Counsel's request but does not believe, where the industry parties are in agreement, that Commission approval is necessary. SWBT stated that it does not oppose the Commission's involvement, but it believes that the Staff's participation in the industry activities serves that role in uncontested activities such as this one. No objections to this application for intervention were received.

The requirement for a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention, and neither Staff nor Public Counsel files a request for a hearing, the Commission may determine that a hearing is not necessary. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission has reviewed Public Counsel's request and the other pleadings. The Commission finds that MCI and SWBT have an interest in this proceeding

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and intervention shall be granted. The Commission has not received any notice of opposition or objections to Public Counsel's request and, therefore, the Commission will approve and adopt the Industry Report on the Elimination of Protected Codes in the 816 and 913 NPAs, adopting the recommendation to eliminate the protected codes in the 816 area code.

IT IS THEREFORE ORDERED:

1. That the Application for Intervention filed by MCI Telecommunications Corporation (MCI), an MCI WorldCom Company, on April 20, 1999, is granted.
2. That the Application for Intervention filed by Southwestern Bell Telephone Company, on April 22, 1999, is granted.
3. That the Industry Report on the Elimination of Protected Codes in the 816 and 913 NPAs, dated March 20, 1999, filed on April 6, 1999, is approved and adopted by the Commission and the recommendations, as listed in the Industry Report under Paragraph VIII. Industry Plan, are approved.
4. That this order shall become effective on May 13, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur

Register, Regulatory Law Judge

**The Staff of the Missouri Public Service Commission, Complainant,
v. Miller Telephone Company, a Missouri Corporation, Re-
spondent.**

*Case No. TC-98-350
Decided May 6, 1999*

Telecommunications § 11. The Commission approved a stipulation and agreement whereby Miller Telephone Company agreed to reduce its earnings on an annual basis by approximately \$90,708. As part of the stipulation and agreement, the Commission authorized the company to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small companies.

Telecommunications § 14, 31. The Commission approved a stipulation and agreement whereby Miller Telephone Company agreed to reduce its earnings on an annual basis by approximately \$90,708. The stipulation and agreement eliminated the company's Touchtone additive and authorized the company to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small companies. The Commission rejected an intervenor's proposal to bring interLATA and intraLATA access rates to parity.

APPEARANCES

William K. Haas, Senior Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

W.R. England, III, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for Miller Telephone Company.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

REGULATORY LAW JUDGE: Vicky Ruth.

REPORT AND ORDER

Procedural History

On February 13, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a complaint against Miller Telephone Company (Miller) regarding the rates and charges of Miller. The complaint notes that Staff completed an audit of Miller's books and records and has concluded that Miller's rates are unreasonable and that its revenues should be reduced by \$100,000 on an annual basis. The motion further noted that Staff discussed the results of its audit with Miller and requested that Miller modify its rates and charges, but that those discussions did not reach a satisfactory conclusion from the Staff's perspective.

On February 23, 1998, the Commission issued its Notice of Complaint directing Miller to answer by March 25, 1998. At Miller's request, the Commission granted the company an additional two weeks, from March 25, 1998, to April 8, 1998, in order to answer or satisfy the complaint. On April 8, 1998, the parties filed a Stipulation and Agreement. Staff stated in the stipulation that it conducted a per-book review of Miller's earnings based upon the twelve months ending June 30, 1997. Staff and Miller executed a Stipulation and Agreement resolving the issues surrounding Staff's audit.

On April 13, 1998, the Commission issued an Order Giving Notice and Setting Intervention Period. This order provided that any party wishing to intervene shall file an application to do so no later than May 13, 1998. On that date, Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest,

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Inc. (AT&T), filed applications to intervene. The Commission issued an order granting the intervention applications of SWBT and AT&T on May 27, 1998.

The May 27 order also scheduled a prehearing conference for June 16, 1998, and directed the parties to file a proposed procedural schedule. On June 19, 1998, the Staff filed a Motion to Establish Procedural Schedule, and the Commission issued an Order Adopting Procedural Schedule on July 20, 1998. Direct testimony was filed on behalf of Staff and Miller on August 6, 1998. Staff and Miller filed additional direct testimony on August 10, 1998. AT&T and Miller filed rebuttal testimony on September 14, 1998, and SWBT, Staff, and Miller filed surrebuttal testimony on October 13, 1998. Miller filed an additional affidavit on October 15, 1998.

The parties filed a Hearing Memorandum on October 27, 1998, and an evidentiary hearing was held on November 20, 1998. During the hearing, the Commission reserved Exhibit Nos. 13-16 for the late filing of exhibits offered in response to questions raised during the hearing. Although the parties were given the opportunity to make objections to these late-filed exhibits, no objections were filed. Miller filed an initial brief on January 13, 1999, and Staff and SWBT filed initial briefs on January 14, 1999. On February 1, 1999, Miller, Staff and SWBT filed notices that they would not be filing reply briefs. On the same date, AT&T filed a reply brief. The Office of the Public Counsel (Public Counsel) did not file either initial or reply briefs.

On February 24, 1999, Miller filed a motion to strike the reply brief of AT&T. Miller argued that AT&T was the only party to object to the Stipulation and Agreement, and that it is unlikely that a hearing would have been held if not for AT&T's intervention. Miller alleged that due to AT&T's failure to file an initial brief, the other parties declined the opportunity to file reply briefs since the absence of an initial brief from AT&T left nothing warranting a response. AT&T filed a response on March 8, 1999, and argued that an initial brief is not required in order for AT&T to reply to the initial briefs of other parties. AT&T alleged that it exercised its prerogative to merely reply to the contentions of the other parties as opposed to filing an initial brief itself. The Commission issued an order denying the motion to strike on March 23, 1999.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

I Uncontested Issues

The Stipulation and Agreement submitted by Staff and Miller contains several provisions that did not draw objection from any party. Those provisions are:

A. Revenue Reduction

The Stipulation and Agreement provides that Miller's earnings will be reduced on an annual basis by approximately \$90,708, which is approximately the level of excess earnings identified in the Staff's audit.

B. Removal of Touchtone Charges

The Stipulation and Agreement would eliminate Miller's existing Touchtone additive, resulting in a decrease in annual local service revenue of \$18,264.

C. Depreciation Rates

The Stipulation and Agreement authorizes Miller to adopt new depreciation rates that are consistent with Staff's "generic" depreciation rates for small companies. The Staff provided a schedule which shows the revenue requirement impact resulting from the adoption of the stipulated depreciation rates is \$1,934.

D. Amortization

Miller is constructing a new building to connect the central office switch and business office buildings and is replacing backbone feeder cables with fiber optic cable. Miller is also replacing its analog carrier. Miller previously obtained Commission approval to borrow \$2,098,600 for this construction. The Stipulation and Agreement authorizes Miller to book a special amortization of \$6,037 per month (\$72,444 per year), for the duration of Miller's modernization and construction program, and until the Commission approves a request by Miller to end it. The \$72,444 represents the difference between total overearnings (\$90,708) and the elimination of the touchtone charge (\$18,264). The special amortization will be used as a permanent reduction in Miller's rate base calculation.

The Commission notes that under the terms of the Stipulation and Agreement, Miller agrees to provide the Commission's Accounting Staff with semiannual financial statements in such detail as to specifically identify the special amortization. The Commission will require the Staff to provide an annual update or report to the Commission regarding the status of the special amortization and the method by which the new assets are booked.

II. Contested Issues**A. Approval of the Stipulation and Agreement**

The Staff, Miller and Public Counsel argued that the Commission should approve the Stipulation and Agreement. SWBT did not oppose the Commission's approval of the Stipulation and Agreement in this case.

AT&T argued that this complaint proceeding is the proper forum to address Miller's intrastate access service rates. AT&T alleged that the Commission should reject the Stipulation and Agreement and address the current rate disparity between

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Miller's intrastate interLATA and intrastate intraLATA access service rates.

B. Parity Between InterLATA and IntraLATA Access Rates

The major contested issue is whether Miller's access rates should be redesigned to bring interLATA and intraLATA access rates to parity. Staff argued that although Carrier Common Line (CCL) rate parity has been achieved for other companies, the Commission has stated in a recent decision¹ that the impact on the company's access customers must be mitigated where possible during the period of transition to a competitive environment. Staff stated that in regard to the switched access customers of Miller, CCL rate parity would simply translate into a rate increase for intraLATA traffic. Staff also envisioned that subsequent future proceedings might provide other avenues to achieve CCL rate parity. In addition, Staff argued that any overearnings the company might be experiencing will be short-lived in that once the company completes its modernization and upgrade program, it will no longer be experiencing any overearnings. Based on these considerations, Staff recommended the Commission reject the proposal to achieve Carrier Common Line rate parity.

Miller noted that although it is not opposed to the concept of bringing its interLATA and intraLATA access rates to parity, it does not believe that this is the case in which to do so. Miller stated that setting access rates at parity in this case would shift access expense from one group of customers (i.e., interLATA) to another group of customers (i.e., intraLATA), and would likely create additional controversy.

The Office of the Public Counsel (Public Counsel) indicated that it supports the approval of the Stipulation and Agreement and indicated that no further adjustment to rate design is necessary at this time.

AT&T, however, recommended that the Commission set the originating and terminating CCL rate, for both interLATA and intraLATA service, at \$0.0367 per access minute of use. AT&T argued that setting the originating and terminating CCL rates for both interLATA and intraLATA access service at the same level provides a more equitable apportionment of the CCL cost/contribution recovery to Miller's intrastate access customers.

SWBT opposed AT&T's proposal to change access rates, arguing that AT&T seeks to redesign those rates to benefit itself. SWBT noted that AT&T proposed to significantly decrease interLATA rates (which are the access rates AT&T primarily pays) and fund that decrease by increasing rates to Miller's intraLATA access customers (primarily SWBT). SWBT alleged that it is inappropriate to require intraLATA access customers to fund this rate decrease for interLATA access customers. SWBT argued that increasing intraLATA access rates as proposed by AT&T would put upward pressure on short-haul toll rates, and would also discourage IXCs from offering intraLATA toll services in Miller's exchanges and participating in the intraLATA presubscription process there.

¹ Case No. TR-97-567, In the Matter of the Tariff Filing of ALLTEL Missouri, Inc., to Consolidate Its Access Rate Tariffs, Report and Order adopted August 27, 1998.

AT&T's position must be rejected. Although Common Carrier Line (CCL) rate parity has been achieved for some companies, the Commission finds that the impact on access customers is a factor which should be considered and mitigated where possible. Although AT&T's proposal may be revenue-neutral to Miller, it would increase access rates for Miller's intraLATA access customers by decreasing rates for the interLATA access customers. In this instance, the Commission declines to require the parties to bring interLATA and intraLATA access rates to parity as proposed by AT&T.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Miller is a local exchange telecommunications service provider as defined under Section 392.410, RSMo Supp. 1998, and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 392, RSMo.

The Commission has the legal authority to approve a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 536.140, RSMo 1994. Based upon its findings of fact, the Commission concludes that the Stipulation and Agreement submitted by Miller and Staff should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by Miller Telephone Company and the Staff of the Missouri Public Service Commission on April 8, 1998, is hereby approved (*see* Attachment A).
2. That the Staff of the Missouri Public Service Commission shall provide the Commission with an annual update of Miller's financial statements in such detail as to specifically identify the status of the special amortization and the method by which the new assets are booked. The annual update shall be filed in a new docket within one year of the effective date of this order.
3. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.
4. That late-filed exhibits numbered 13-16 are received into evidence.
5. That this Report and Order shall become effective on May 18, 1999.

Lumpe, Ch., Crumpton and Drainer, CC., concur. Murray and Schemenauer, CC., dissent, with dissenting opinions attached.

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EDITOR'S NOTE: Attachment A, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

Dissenting Opinion of Commissioner Connie Murray

I respectfully dissent from the majority opinion. For the reasons articulated in the Dissenting Opinion of Commissioner Schemenauer, I would reject the Stipulation and Agreement.

Dissenting Opinion of Commissioner Robert G. Schemenauer

I respectfully dissent from the majority opinion regarding the disposition of the overearnings of Miller Telephone Company (Miller).

It is not in the public interest to reward Miller with an open-ended special annual amortization of \$72,444 after it has overearned \$100,000 annually at the expense of Missouri telephone subscribers.

Staff presented a weak argument in recommending this accounting sleight of hand. It assumed that Miller could justify, and would request and receive, a rate increase after the modernization project was completed. This is unfounded speculation on the part of Staff.

A better resolution would have been to reduce both the interlata and intralata originating and terminating CCL rates by the full \$72,444. These exorbitant rates are being paid by all Missouri telephone subscribers who call into or out of Miller's exchange.

Staff suggestions that the disparity between CCL rates and their reduction could be considered in another docket are neither expedient nor justified. Miller's CCL rates should have been addressed to the extent possible in this case. Staff additionally suggested that Miller's CCL rates could be reduced by shifting the cost to the Missouri Universal Service Fund when it is implemented. This is another accounting sleight of hand. The telephone subscribers of Missouri will still be paying these rates albeit under a different name.

For these reasons and others I respectfully dissent and pray that further creative accounting maneuvers that reward overearning companies are disposed of before being included in a proposed Stipulation and Agreement.

In the Matter of the Investigation into the Earnings of Mid-Missouri Telephone Company.

Case No. TR-98-343

Decided May 6, 1999

Telecommunications § 11. After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$254,504.75. As part of that agreement, the company was authorized to adopt new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies.

Telecommunications § 14. After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$254,504.75. The agreement reduced interLATA access rates and removed the intraLATA Carrier Common Line cap. Included in the agreement is the elimination of the company's Touchtone additive and the authorization of new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies. The Commission also allowed the company to retire existing plant, resulting in an extraordinary amortization of approximately \$1,250,000, to be amortized at a rate of \$250,000 for five years.

Telecommunications § 39. After hearing, the Commission approved a non-unanimous stipulation and agreement that decreased the company's annualized revenue requirement by \$254,504.75. The agreement reduced interLATA access rates and removed the intraLATA Carrier Common Line cap. Included in the agreement is the elimination of the company's Touchtone additive and the authorization of new depreciation rates that are consistent with the Commission Staff's generic depreciation rates for small telephone companies. The Commission also allowed the company to retire existing plant, resulting in an extraordinary amortization of approximately \$1,250,000, to be amortized at a rate of \$250,000 for five years.

APPEARANCES

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for Mid-Missouri Telephone Company.

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108-2684, for AT&T Communications of the Southwest, Inc.

Michael F. Dandino, Senior Public Counsel, and *Shannon Cook*, Legal Counsel, Office of the Public Counsel, Post Office Box 76800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Carol M. Keith, Assistant General Counsel, and *David J. Stueven*, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Vicky Ruth.

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REPORT AND ORDER

Procedural History

On February 13, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Open Docket. The motion indicated that Staff had conducted a per book review of the earnings of Mid-Missouri Telephone Company (MMTC). The Staff's review was based upon the twelve months ending December 31, 1996, updated to November 30, 1997. The motion noted that Staff and MMTC had executed the attached Stipulation and Agreement to resolve all issues surrounding the audit performed by Staff and the results of that audit. The Stipulation and Agreement was attached to the motion, and Staff requested that the Commission approve the Agreement. The Staff filed an addendum to the Stipulation and Agreement on March 3, 1998, in which it detailed the depreciation agreement between Staff and MMTC. On March 17, 1998, MMTC filed a schedule that provided the rate design changes in the Stipulation and Agreement. MMTC inadvertently submitted the wrong schedule and corrected this error on March 23, 1998, by filing a new schedule.

On February 27, 1998, the Commission issued an Order Establishing Case, Rejecting Tariff Sheets, Giving Notice, Setting Intervention Period, and Granting Protective Order. The order provided that any party wishing to intervene shall file an application to do so no later than March 30, 1998. Southwestern Bell Telephone Company (SWBT) filed an Application to Intervene and Request for Hearing on March 30, 1998. On the same date, AT&T Communications of the Southwest, Inc. (AT&T), also filed an Application to Intervene. On April 8, 1998, the Commission issued an order granting the intervention applications of SWBT and AT&T.

The April 8 order also scheduled a prehearing conference for April 21, 1998, and directed the parties to file a proposed procedural schedule. Staff filed a Motion to Establish Procedural Schedule on April 30, 1998, and the Commission issued an Order Adopting Procedural Schedule on May 29, 1998. Direct testimony was filed on behalf of MMTC and Staff on July 20, 1998, and rebuttal testimony was filed on behalf of AT&T and SWBT on August 31, 1998. Surrebuttal testimony was filed on September 28, 1998, on behalf of MMTC, SWBT, AT&T, and Staff.

On October 8, 1998, MMTC filed a Motion for Continuance of Hearing and Extension of Hearing Memorandum Date, as one of its witnesses, Mr. Robert Schoonmaker, was unavailable on the scheduled hearing dates of October 29-30, 1998. The motion stated that MMTC confirmed with the other parties that continuing the case to December 16 and 17, 1998, was acceptable. The Commission issued an order modifying the procedural schedule on October 19, 1999, rescheduling the hearing to December 16 and 17, 1998. In addition, the Commission extended the deadline for filing the Hearing Memorandum from October 15, 1998, to December 1, 1998.

The parties filed the Hearing Memorandum on December 1, 1998, and an evidentiary hearing was held on December 16, 1998. During the hearing, the Commission

reserved Exhibit Nos. 18-23 for the late filing of exhibits offered in response to questions raised during the hearing. Although the parties were given the opportunity to make objections to these late-filed exhibits, no objections were filed.

The Commission conducted a local public hearing on February 9, 1999, in Pilot Grove, Missouri. The local public hearing had originally been scheduled for January 13, 1999, but was rescheduled due to adverse weather conditions. Staff, MMTC, AT&T, and SWBT filed initial briefs on March 10, 1999, and reply briefs on March 25, 1999. The Office of the Public Counsel (Public Counsel) did not file either initial or reply briefs.

Pending Motion

On April 19, 1999, MMTC filed a Motion for Expedited Consideration of Stipulation. The motion requested that the Commission issue its decision on or before May 1, 1999, due to deadlines which MMTC is subject to in other dockets involving related or dependent issues. Although the Commission agrees that a prompt decision will be beneficial to all parties, the request does not allow the Commission adequate time to render a decision.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

I Uncontested Issues

The Stipulation and Agreement submitted by Staff and MMTC, as amended by the March 3, 1998, Addendum and supplemented by the March 23, 1998, Schedule, contains two provisions that did not draw objections from any party. These provisions are:

A. Removal of Touchtone Charges

The Stipulation and Agreement would eliminate MMTC's existing touchtone additive, resulting in a decrease in annual local service revenue of \$25,815.00.

B. Depreciation Rates

The Stipulation and Agreement authorizes MMTC to adopt new depreciation rates that are consistent with Staff's "generic" depreciation rates for small telephone companies.

II Contested Issues

The parties disagreed regarding the amount of the reduction and the particulars of some rate reduction methods employed in the Stipulation and Agreement. SWBT

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disputed both the amount of the reduction and the rate design. AT&T did not dispute the amount of the revenue reduction, although it did disagree with the rate design. Public Counsel did not object to the Stipulation and Agreement. The issues disagreed upon are as follows:

A. Amount of Overearnings

The Stipulation and Agreement proposes to lower MMTC's annualized revenue requirement by \$254,504.75. SWBT argues that MMTC should be required to further reduce its revenues by approximately \$250,000 annually. AT&T does not dispute the amount of the overearnings.

1. Retirement of Plant

The retirement of plant, or modernization, consisted of replacing interoffice microwave facilities with fiber, installing fiber reach in a Carrier Service Area configuration, and replacing all existing digital switches with a Lucent host/remote configuration.

SWBT appears to object to the special amortization of the retired plant for several reasons, including the fact that the new plant was not ordered or required by the Commission. Staff and MMTC responded with evidence that the new level of plant was necessary for MMTC to meet certain levels of service and quality as required by the changing environment in telecommunication. For example, the retired plant did not have the ability to provide Signaling System 7 capabilities, to change to the new 660 area code, four-digit carrier identification codes, and intraLATA presubscription. Staff and MMTC indicated that it was more cost effective to replace the plant than to upgrade the existing facilities.

This Commission agrees that the modernization program was necessary before MMTC customers could access many modern telecommunications services. The Commission finds that the retirement of plant was appropriate.

2. Amortization of Retired Plant

The decision to retire existing plant resulted in an extraordinary amortization. The equipment replaced was not fully depreciated because the past depreciation life exceeded the useful/used life of the equipment. The unrealized depreciation on the replaced equipment amounted to approximately \$1,250,000. Staff argued that the ability to directly amortize the retired plant depended on whether it qualified as a non-recurring extraordinary retirement. Staff applied the criteria set forth in the Uniform System of Accounts for telephone companies to make this determination. Based upon those criteria, Staff determined that the retirement was nonrecurring and extraordinary, and that a special amortization was warranted. As a result of the negotiations between Staff and MMTC, the Stipulation and Agreement provides that MMTC may amortize approximately \$250,000 per year for five years, for a total special amortization of around \$1,250,000 for the retired plant.

SWBT objects to the special amortization of retired plant. Specifically, SWBT alleges that MMTC's actual overearnings have been inappropriately reduced by

approximately \$250,000 per year due to this extraordinary amortization of retired plant. SWBT also objects because the Stipulation and Agreement does not contain a provision terminating the special amortization at the end of the five years. At the hearing, witnesses for MMTC and Staff agreed that there is no provision in the Stipulation and Agreement that would automatically terminate the \$250,000 extraordinary amortization from being recovered in the sixth and subsequent years. However, both MMTC and Staff contend that there were other agreements in the negotiation of the Stipulation and Agreement to offset this. For example, MMTC argued that it had interoffice facilities that were in place in the last quarter of the year but weren't recognized in the calculations because Staff looked at what was in place as of August. Likewise, Staff noted that with MMTC's additional \$2 million in plant, Staff does not expect there to be overearnings at the end of the five-year period. Staff also stated at the hearing that traditionally it looks at a company's earnings at the end of such an amortization period.

The Commission has reviewed the parties' positions and determines that the extraordinary amortization of approximately \$1,250,000 is appropriate. However, the Commission notes that the March 3, 1998, Addendum to the Stipulation and Agreement specifically states that the amortization is for a five-year period and that it commences January 1, 1997. The Commission finds that by the terms of the parties' agreement, the special amortization does terminate after the five-year period.

Furthermore, the Addendum states that the parties agree to the creation of an extraordinary retirement totaling \$1,868,202 for an amortization of \$373,640.40 per year for five years. Although the parties did not adequately explain the discrepancy, the Commission finds that the evidence presented and the briefs submitted establish that the extraordinary amortization actually totals approximately \$1,250,000, to be amortized at a rate of \$250,000 for the five years.

B. Rate Design

As noted previously, the rate design proposed in the Stipulation and Agreement uses the first \$25,815.00 to reduce local rates by eliminating the current touchtone additives. The remaining \$228,689.75 annual revenue reduction is accomplished by modifying the switched access rate structure. Specifically, the Stipulation and Agreement proposed reducing interLATA access rates (thus reducing the disparity between interLATA and intraLATA CCL rates), and removing the intraLATA Carrier CommonLine (CCL) Cap.

1. Bringing interLATA and intraLATA Access Rates Closer to Parity

Under the Stipulation and Agreement, interLATA access rates are reduced to bring interLATA and intraLATA access rates closer to parity. Staff and MMTC allege that there was an insufficient revenue reduction amount to bring interLATA rates to complete parity with intraLATA rates.

SWBT argues that it is inappropriate to reduce interLATA access rates with no reduction to intraLATA access rates. SWBT contends that the over-earnings should

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be allocated to the access rates based on the percentage that SWBT contributed to MMTC's total state access revenues. SWBT further suggests that if MMTC desires parity, then MMTC can either absorb the costs of bringing access rates into parity or offset those costs by raising the prices of ancillary services. Staff points out that this would raise the cost to individual customers and/or might place MMTC in an under-earnings situation.

SWBT's position must be rejected. In an over-earnings situation, there is no analysis to determine which customer group contributed to the over-earnings to determine which customer group should receive a "refund." As Staff noted in its initial brief, rate design is prospective in nature. The annualized overearnings should be calculated and then the rate design should be developed to correct the over-earnings on a total company basis.

2. Elimination of the Carrier Common Line (CCL) Cap

The agreement would eliminate the intraLATA CCL Cap, which imposes a reduced access rate for traffic above a certain level of annual minutes of usage. The agreement would create a single access rate no matter the amount of annual usage. Staff and MMTC argue that eliminating the CCL Cap for intraLATA access helps bring intraLATA and interLATA access rates closer to parity. Staff's analysis determined that eliminating the CCL Cap is revenue-neutral using test year quantities, and that the composite rate is actually the same that SWBT pays when using test year quantities.

SWBT opposes the elimination of the intraLATA CCL Cap, and argues that by eliminating the Cap, the Stipulation and Agreement really allows a rate increase because it allows MMTC to raise the access rates it applies to minutes of use above the test period level. SWBT alleges that this would be costly to intraLATA service providers such as SWBT.

SWBT's argument in favor of retaining the CCL Cap is not persuasive. There is no compelling evidence that would indicate that SWBT would be harmed by the elimination of the CCL Cap. The evidence does indicate that Staff and MMTC have carefully considered the revenue effects for the proposed CCL rate reduction and the elimination of the CCL Cap, and that the proposed changes will reduce MMTC's revenue in the desired manner. SWBT's objection to the elimination of the CCL Cap is rejected.

3. Decision Not to Create Parity Between the CCL Originating and Terminating Rates

Staff states that since the amount of the annualized revenue reduction was not sufficient to bring interLATA and intraLATA access rates into parity, it did not reach the issue of originating and terminating rate parity.

AT&T argues that the Commission should set MMTC's originating and terminating CCL rate, for both interLATA and intraLATA, at parity. In order to accomplish

this, the originating rate would have to be raised to offset reductions in the terminating rate. Staff contends, and MMTC agrees, that it is inappropriate to raise the originating rate in an overearnings case. SWBT also opposes AT&T's proposal because AT&T funds the decrease in interLATA rates (which are the access rates AT&T primarily pays) by increasing rates to MMTC's intraLATA access customers (primarily SWBT).

The Commission is persuaded by the position of Staff and MMTC that there is an inadequate amount of annualized revenue reduction to create parity between the CCL originating and terminating rates at this time.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Mid-Missouri Telephone Company is a local exchange telecommunications service provider as defined under Section 392.410, RSMo Supp. 1998, and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 392, RSMo.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 536.140, RSMo 1994. Based upon its findings of fact, the Commission concludes that the Stipulation and Agreement submitted by Staff and MMTC should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by Mid-Missouri Telephone Company and the Staff of the Missouri Public Service Commission on February 13, 1998, and amended by the March 3, 1999, Addendum and supplemented by the March 23, 1998, Schedule (Highly Confidential), is hereby approved (*see* Attachments A and B).

2. That the creation of an extraordinary retirement of plant totaling approximately \$1,250,000 for an amortization of \$250,000 over five years is approved, to commence January 1, 1997.

3. That the Staff of the Commission is directed to complete an earnings review at the end of the special amortization period. A report regarding the review shall be filed as a new case.

4. That late-filed exhibits numbered 18-23 are received into evidence.

5. That Mid-Missouri Telephone Company's pending Motion for Expedited Consideration of Stipulation, requesting that the Commission issue its decision on or before May 1, 1999, is denied.

6. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.

7. That this Report and Order shall become effective on May 18, 1999.

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Lumpe, Ch., Crumpton and Drainer, CC., concur. Murray and Schemenauer, CC., dissent, with dissenting opinions attached.

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

Dissenting Opinion of Commissioner Connie Murray

I respectfully dissent from the majority opinion for the reasons articulated in the dissenting opinion of Commissioner Schemenauer.

Furthermore, the Stipulation and Agreement does not account for additional revenue that will be created by the new plant. Nor does it consider that elimination of the CCL cap will increase overearnings. Additionally, I am concerned that Mid-Missouri Telephone Company appears to have no clear method of allocating expenses between its regulated utility and its non-regulated businesses.

I would reject the Stipulation and Agreement.

Dissenting Opinion of Commissioner Robert G. Schemenauer

I respectfully dissent from the majority opinion regarding the disposition of overearnings by Mid-Missouri Telephone Company (Mid-Missouri).

The creation of an extraordinary retirement of plant totaling \$1,250,000 to be amortized at \$250,000 over five years is not in the public interest. An additional concern of mine is that the ordered paragraph does not agree with the Stipulation and Agreement in the amount to be amortized. An Addendum to the Stipulation and Agreement filed by Staff on March 3, 1999 indicates an agreement by Staff and Mid-Missouri that the total extraordinary retirement is \$1,868,202 with an amortization of \$373,640.40 per year over five years.

The overall reduction in revenue for Mid-Missouri, as agreed to by Staff and Mid-Missouri, reflect annual overearnings of between \$504,000 and \$627,640 at the expense of Missouri telephone subscribers. To grant an extraordinary retirement and amortization of this magnitude as a reward for overearning is not a prudent remedy for Missouri telephone subscribers.

Regarding Mid-Missouri's recovery of the unamortized balance of its unused plant due to early retirement, it is clear to me that Mid-Missouri has already been compensated for this by its overearnings in past years. The inconvenience of waiting to write off the unamortized balance of the unused plant until its normal depreciation

cycle transpires should be of little consequence to Mid-Missouri in light of its overearnings. A better remedy to this overearnings case would have been to grant this special amortization retroactively to begin January 1, 1995 and end December 31, 1999 and then to order prospectively a further reduction in the CCL rates in an amount equal to this special annual amortization.

For these reasons and others I respectfully dissent and pray that further creative accounting maneuvers which tend to reward overearning companies are disposed of before being included in a proposed Stipulation and Agreement.

**In the Matter of the Application of Union Electric Company for an
Order Authorizing It to Participate in the Midwest ISO.**

Case No. EO-98-413
Decided May 13, 1999

Electric § 1. The Commission approved a stipulation and granted the application of Union Electric Company d/b/a AmerenUE for authority to participate in the Midwest Independent Transmission System Operator, Inc.

**ORDER GRANTING INTERVENTION AND APPROVING STIPULATION AND
AGREEMENT**

On March 30, 1998, Union Electric Company d/b/a AmerenUE (AmerenUE) filed an application requesting Commission authority to participate in the Midwest Independent Transmission System Operator, Inc. (MISO). On November 19, 1998, Adam's Mark Hotel, Alumax Foils, Inc., Anheuser-Busch, Cos., Inc., The Boeing Corporation, Ford Motor Corporation, Holnam, Inc., Hussman Corporation, MEMC Electronic Materials, Inc., Mallinckrodt Group, Inc., Monsanto Company, and Precoat Metals filed an application to intervene. No party opposed the application. The Commission finds that the application is in substantial compliance with the Commission's rules regarding intervention and will grant it.

On April 22, 1999, some of the parties filed a Stipulation and Agreement (attached hereto as Attachment A) that would resolve all the issues. Although not all of the parties were signatories to the Stipulation and Agreement, no party requested a hearing, and the Commission will treat it as unanimous pursuant to 4 CSR 240-2.115.

In the Stipulation and Agreement, the parties agree that the Commission should approve AmerenUE's application to participate in the MISO, subject to certain conditions. In general, those conditions are:

A. That AmerenUE be allowed to join the MISO for the six-year transition period as it is defined in the MISO's tariff;

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B. That AmerenUE request that the MISO file with the Federal Energy Regulatory Commission at least one year before the end of the transition period its position on congestion pricing, the post-transition treatment of bundled retail load, and incentives for efficient location of generation and transmission;

C. That AmerenUE shall file with the Commission at least six months before the end of the transition period a request to join the MISO (or another similar entity) on a permanent basis;

D. That, under certain circumstances, AmerenUE shall address the need for independence of control area functions not being performed by the MISO;

E. That AmerenUE, if it seeks to withdraw from the MISO, shall notify the Commission; and

F. That, under certain specific circumstances, AmerenUE may request extension of its obligations under the Stipulation and Agreement.

AmerenUE also states its understanding of which transmission facilities are to be controlled by the MISO, and the treatment of the transmission facilities remaining under AmerenUE's control.

The Commission finds that allowing AmerenUE to join the MISO under the conditions set forth in the Stipulation and Agreement is in the public interest. Pursuant to Section 536.060, RSMo 1994, the Commission may accept the Stipulation and Agreement as a resolution of the issues in this case. The Commission has reviewed the Stipulation and Agreement and verified application and finds the Stipulation to be reasonable and in the public interest and will, therefore, approve it.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement, Attachment A to this order, is hereby approved.

2. That Union Electric Company d/b/a AmerenUE is authorized to participate in the Midwest Independent Transmission System Operator, Inc. according to the terms of the Stipulation and Agreement.

3. That the application to intervene of Adam's Mark Hotel, Alumax Foils, Inc., Anheuser-Busch, Cos., Inc., The Boeing Corporation, Ford Motor Corporation, Holnam, Inc., Hussman Corporation, MEMC Electronic Materials, Inc., Mallinckrodt Group, Inc., Monsanto Company, and Precoat Metals is granted.

4. That nothing in this order shall be considered a finding by the Commission of the reasonableness of the transactions herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.

5. That the Commission reserves the right to consider the ratemaking treatment to be afforded the transactions and properties herein involved, and the resulting cost of capital, in any later proceeding.

6. That this order shall become effective on May 25, 1999.

7. That this case may be closed on May 26, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur

Mills, Deputy Chief Regulatory Law Judge

EDITOR'S NOTE: Attachment A, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of Missouri Public Service's, a Division of UtiliCorp
United Inc., Purchased Gas Adjustment Factors to be Audited in
its 1996-1997 Actual Cost Adjustment.**

Case No. GR-97-298
Decided May 20, 1999

Evidence, Practice and Procedure §8. Gas §17.1. The Commission found the unanimous stipulation and agreement, reached by the parties agreement after the Commission's decision in Case Nos. GR-95-273 and GR-96-192, was reasonable and should be approved. The parties agreed that no Utilicorp Energy Services adjustments be made, that an overrun penalties/scheduling fees adjustment of \$64,044 be made in the 1998/1999 ACA filing, and that no adjustment be made on the calculation of the cash out/imbalance.

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

UtiliCorp United Inc., d/b/a Missouri Public Service (MPS), filed its revised tariff sheet reflecting a change in the purchased gas adjustment (PGA) on January 31, 1997, and on October 23, 1997, filing substitute tariff sheets on November 5. The Commission approved interim rates on February 13, 1997, and November 12, 1997. In its November 12 order, the Commission ordered Staff to conduct an audit of this ACA period and submit its results on or before September 1, 1998. On December 12, 1997, Staff requested a protective order, which was granted by the Commission on December 30.

On September 1, 1998, the Staff of the Public Service Commission (Staff) filed its recommendations regarding MPS's 1996-1997 actual cost adjustment filing. On September 22, the Commission ordered MPS to file its response to Staff's recommendations. On October 8, MPS filed its response to Staff's recommendations. The UtiliCorp Energy Services (UES) adjustments issue is identical to the UES issue raised in Case No. GR-95-273 and Case No. GR-96-192. Staff recommended that this ACA case remain open pending an order from the Commission in Case No. GR-95-273 and Case No. GR-96-192.

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On September 23, 1998, the Commission issued a Report and Order in Case No. GR-95-273. On December 16, 1998, the Commission issued a Report and Order in Case No. GR-96-192. On March 15, 1999, the Commission set an early prehearing conference for March 24, 1999. Staff filed a Motion to Cancel Prehearing Conference and Suspend the Filing of Procedural Schedule on March 23 indicating that the parties had reached a settlement agreement and that a Stipulation and Agreement would be filed within 60 days of that motion. The Commission canceled the prehearing conference.

On April 16, 1999, a Unanimous Stipulation and Agreement was filed by MPS, Staff, and the Office of the Public Counsel (Public Counsel). The Unanimous Stipulation and Agreement stated that only three areas of disagreement remained between the parties after MPS filed its responses to Staff's recommendations including UES adjustments, overrun penalties/scheduling fees, and cash out/imbalance. As a result of the subsequent Commission decision and further discussion between the parties, the parties resolved these remaining areas of disagreement in a manner which they believe to be reasonable and just.

As a result of the Commission's decisions in Case No. GR-95-273 and Case No. GR-96-192, the parties agreed that no UES adjustments need be made. The parties agreed that the overrun penalties/scheduling fees is an issue between MPS and Panhandle Eastern and that an adjustment consistent with that proposed by the Staff should be made to remove the overrun penalty of \$64,044. The parties agreed that this adjustment removing the overrun penalty will be made in the 1998-1999 ACA filing. The parties also agreed that no adjustment shall be made based upon the calculation of cash out/imbalance as previously recommended by the Staff.

Pursuant to Section 536.060 (RSMo 1994), the Commission accepts the Unanimous Stipulation and Agreement as resolution of the issues in this case. The Commission has reviewed the Unanimous Stipulation and Agreement, finds it to be reasonable and will approve it.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on April 16, 1999 by the parties, Attachment A to this order, is approved.
2. That this order shall become effective on June 2, 1999.
3. That this case may be closed after June 3, 1999.

Crumpton, Murray and Drainer, CC., concur Lumpe, Ch., dissents
Schemenauer, C., not participating

Register, Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of the Application of Mark Twain Rural Telephone Company For Authority to Borrow an Amount not to Exceed \$32,976,550 from the Rural Utilities Service and the Rural Telephone Bank and in Connection Therewith to Execute an Amending Telephone Loan Contract, Mortgage Notes, and a Supplemental Mortgage Security Agreement and Financing Statement.

Case No. TF-99-200
Decided May 25, 1999

Telecommunications §19. The Commission approved a telephone company's plan to borrow up to \$32,976,550 from the Rural Utilities Service and the Rural Telephone Bank to fund improvements to the company's system. The telephone company was required to maintain an equity ratio equal to or greater than forty percent and was required to submit quarterly surveillance data reports to the Commission's Financial Analysis Department.

ORDER APPROVING FINANCING

Mark Twain Rural Telephone Company (Mark Twain) is a corporation organized under the laws of the State of Missouri and a public utility subject to the jurisdiction of the Missouri Public Service Commission under Section 386.250(2), RSMo Supp. 1998. Mark Twain is engaged generally in the business of providing telecommunications service to approximately 4,200 customers in fourteen exchanges located in Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland and Shelby counties in Missouri. The Company filed an application on November 3, 1998, asking the Commission to approve the borrowing of certain sums, not to exceed \$32,976,550, from the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB) to fund capital improvements and finance the operating needs of Mark Twain. Mark Twain made its request in compliance with Section 392.310, RSMo 1994, and 4 CSR 240-2.060.

Mark Twain provided documentation required by 4 CSR 240-2.060(8) including a statement of the purpose for which the financing was sought, a pro forma balance sheet, income statements, a certified copy of the resolution of the Board of Directors authorizing the loan, a five-year capitalization expenditure schedule and copies of the instruments defining the terms of the loan.

Mark Twain requested "post hoc" approval of the borrowing pursuant to Section 392.330.7, RSMo Supp. 1998, as the loan documents were executed on August 14, 1998 and the mortgages securing this borrowing were filed in the appropriate counties and with the Missouri Secretary of State on that same date. Mark Twain represented that the borrowing was done in good faith as corporate counsel for Mark Twain was not aware of the necessity of obtaining prior Commission approval. After being made aware of this requirement, corporate counsel contacted RUS immediately and no funds were advanced. RUS will not advance any funds until an order has been

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obtained from the Commission.

Mark Twain wishes to use the proceeds of the loan for the construction, completion, extension and improvement of its facilities within the state. Specifically, the proceeds of the loan will be used to make system improvements including replacement of air-core cable, replacement of air-core service entrances, replacement of existing analog station carrier facilities serving 60 percent of the rural subscribers, integration of fiber feeder cable in the local loop, utilization of electronic service area terminals providing 15 KF maximum length non-loaded subscriber loops, further improvements in the fiber toll networks, and generic updates of digital switches all necessary to bring Mark Twain into compliance with the Commission's Modernization Plan and the requirements of RUS.

In order to finance these projects, Mark Twain asks the Commission to approve its borrowing of \$32,976,550 from RUS and RTB. As part of this transaction, Mark Twain has issued a Mortgage Note payable to the United States of America acting through the Administrator of the RUS in the amount of \$20,827,000 and a Mortgage Note payable to RTB in the amount of \$12,149,550, with both notes providing for the payment of the indebtedness evidenced thereby within thirteen (13) years.

The Staff of the Public Service Commission, including the Telecommunications and Financial Analysis Departments, reviewed Mark Twain's application and exhibits and filed a memorandum on April 7, 1999. Staff expressed some concerns that this financing would have a significant impact on Mark Twain's consolidated capital structure should it utilize the entire line of credit offered by this loan. Staff recommended that Mark Twain make every effort to maintain an equity ratio equal to or greater than 40 percent. Staff noted that Mark Twain is requesting approval after having already executed the loan documents. Staff indicated that, since no funds have yet been advanced, Staff reviewed the Application as if it was timely and did not recommend that the Commission seek any penalties against Mark Twain. Staff recommended that the Commission approve Mark Twain's application subject to several conditions that are adopted by this order.

After reviewing Mark Twain's Application and Staff's recommendation, the Commission found that it needed additional information before acting on the Application. On April 15, the Commission issued an Order Directing Additional Filing. That order directed Mark Twain to file additional information regarding the proposed loan and its ability to repay that loan. Mark Twain complied with the April 15 order by filing its response on April 30.

In addition to providing information requested by the Commission, Mark Twain's response asks that the Commission not require Mark Twain to maintain an equity ratio equal to or greater than 40 percent or to seek Commission approval to maintain an equity ratio below that level. Mark Twain also asks that it not be required to submit quarterly surveillance data reports with the Commission.

The requirements from which Mark Twain seeks relief are contained in Staff's Memorandum recommending approval of Mark Twain's application. Staff is concerned that use of the total authorized credit line would cause Mark Twain's equity ratio to fall to an unacceptable level. Staff states that an appropriate ratio of 40 percent equity should be maintained "to guard against unforeseen circumstances that would negatively impact the Company's ability to continue operations." The Commission finds that the requirements requested by Staff are reasonable and necessary to allow the Commission to perform its duty to monitor the financial status of Mark Twain. Therefore, Staff's recommendations will be adopted by this order.

The Commission has reviewed Mark Twain's Application, Staff's memorandum, its attachments and specific recommendations and the additional information submitted by Mark Twain in response to the Commission's Order of April 15. The Commission finds that Mark Twain should be authorized to execute Loan Agreements, Promissory Notes, Mortgages, Security Agreements, and Financing Statements in an amount not to exceed \$32,976,550 as described in its application subject to the conditions proposed by Staff. Based upon Staff's review, Mark Twain's proposed improvement plans appear reasonable and the net effect on Mark Twain from the issuance of the debt and equity falls within a reasonable range. The Commission finds that the funds are reasonably required for the purposes of constructing and modifying facilities and are not reasonably chargeable to operating expenses or to income.

IT IS THEREFORE ORDERED:

1. That the application filed by Mark Twain Rural Telephone Company on November 3, 1998, for financing and the specific relief requested in that application, is granted.
2. That Mark Twain Rural Telephone Company is authorized to execute and deliver a Mortgage Note payable to the United States of America through the Administrator of the Rural Utilities Service in the principal aggregate amount of \$20,827,000.
3. That Mark Twain Rural Telephone Company is authorized to execute and deliver a Mortgage Note payable to the Rural Telephone Bank in the principal aggregate amount of \$12,149,550.
4. That Mark Twain Rural Telephone Company is authorized to do all things necessary to complete the transactions specifically authorized in this order, including executing security agreements, financing statements, loan agreements, promissory notes, mortgages, and other documents, except those things contrary to law or to the rules and regulations of the Commission.
5. That the proceeds of the loans authorized by this order shall be used for the purposes specified in this order and for no other purposes.
6. That Mark Twain Rural Telephone Company shall file a copy of the final Mortgage Notes executed with the Rural Utilities Service and Rural Telephone Bank as well as any other final terms and conditions associated with the financing transactions, and copies of the executed

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agreements, in the Commission's Official Case File within 10 days of the completion of any such transaction, or no later than June 4, 1999 if the subject transactions have already been completed.

7. That Mark Twain Rural Telephone Company shall submit to the Commission any information concerning deviations from its stated use of the funds or any information that would materially change the pro forma capitalization and financial ratios. This would include, but not be limited to, such items as funds used for activities not related to the Modernization Plan or changes in methodology for calculating depreciation.

8. That Mark Twain Rural Telephone Company shall be required to maintain an equity ratio equal to or greater than 40 percent and that Mark Twain Rural Telephone Company shall seek Commission approval to maintain an equity ratio below that level.

9. That Mark Twain Rural Telephone Company shall submit quarterly surveillance data reports to the Commission's Financial Analysis Department until further order of the Commission. The quarterly surveillance data reports shall be submitted directly to Staff and shall not be filed in the case file. However, if the reports are not submitted or if the reports raise the concerns of Staff, Staff shall immediately report to the Commission.

10. The Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions, and the resulting cost of capital, in any later proceeding.

11. That this order shall become effective on June 4, 1999.

Lumpe, Ch., Murray and Drainer, CC., concur Crumpton and Schemenauer, CC., dissent

Woodruff, Regulatory Law Judge

In the Matter of the Application of Steelville Telephone Exchange, Inc., for Authority to Borrow an Amount Not to Exceed \$9,866,100 from the Rural Utilities Service and the Rural Telephone Bank and in Connection Therewith to Execute a Telephone Loan Contract Amendment, Promissory Notes, and a Restated Mortgage, Security Agreement and Financing Statement.

*Case No. TF-99-318
Decided May 27, 1999*

Telecommunications §3. Steelville Telephone Exchange, Inc. is authorized to borrow an amount not to exceed \$9,866,100 from the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB), and to execute various promissory notes and security agreements in association with the proposed loan and to use the amount borrowed to improve and modernize its facilities and to discharge or retire existing indebtedness.

ORDER APPROVING FINANCING

Steelville Telephone Exchange, Inc. (STE), filed its application on January 27, 1999, seeking authority to borrow an amount not to exceed \$9,866,100 from the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB), and to execute various promissory notes and security agreements in association with the proposed loan. In its application, STE states that the proposed loan will be used to improve and modernize its facilities and, possibly, to discharge or retire existing indebtedness.

On April 8, 1999, the Commission directed STE by order to file additional information in support of its application. The Commission directed STE to update its *pro forma* financial statements, Appendix 7 to its Application, to reflect a ten-year period, beginning in 1999. Additionally, the Commission directed STE to inform the Commission as to how it intends to service the proposed debt and whether any new revenues are anticipated during its term. STE filed the requested information on April 30, 1999, and simultaneously requested a protective order to protect highly confidential and proprietary information contained therein. The Commission issued the requested protective order on May 3, 1999.

Discussion

STE proposes to enter into a loan agreement with RUS, the Amending Telephone Loan Contract, pursuant to RUS' project, "Missouri 536-N12 Steelville." STE proposes to execute and deliver a mortgage note to the United States of America, acting through the RUS, in the amount of \$6,231,000, payable within twenty-two years and bearing interest at a variable rate which may exceed seven percent annually, and a second mortgage note to RTB in the amount of \$3,635,100, payable within twenty-two years and bearing interest at a variable rate. As security, STE proposes to execute and deliver a restated mortgage, security agreement and financing statement covering substantially all of its assets. The purpose of the proposed financing is to purchase and install a new tandem switching platform; deploy three remotes from the new tandem; replace aerial cable with underground cable; engineer and construct new outside plant, permitting the delivery of enhanced services to subscribers; and break existing outside plant into multiple Customer Serving Areas.

The Staff of the Commission (Staff) filed its Memorandum in this matter on March 4, 1999, its Revised Memorandum on March 18, 1999, and its Clarification Memorandum on March 26, 1999. In each of its memoranda, Staff recommended that the application be approved. No responses to Staff's recommendations were received.

In its recommendations, Staff states that STE is a regulated public utility which provides telecommunications services to approximately 4,446 customers in its

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Missouri service area. Staff further states that the proposed loan will be used for capital improvements and to finance the operational needs of STE. The Staff believes that the proposed transaction is reasonable and will provide benefits to STE's customers in the form of improved services.

Staff admits that the proposed loan would have a significant impact on STE's consolidated capital structure if STE utilized the entire line of credit. Thus, STE's total debt to total capital ratio would change from 54.98 percent to 71.62 percent and its equity ratio would fall to 28.38 percent. However, Staff states that STE personnel have represented that STE will only draw upon approximately \$1,000,000 annually of the line of credit and Staff recommends approval on that basis. Under that scenario, STE's equity ratios would vary between 43.0 percent and 43.6 percent over the period 1999-2002, and its debt ratios vary from 56.4 percent to 57.00 percent over the same period.

Based on STE's financial statements, the Staff states that the resulting debt ratio, pretax interest coverage ratio and funds flow interest coverage ratio would be well within the range necessary to achieve the benchmark ratio for a "BBB" rated telecommunications company. Staff suggests that STE will eventually achieve a "AA" rating. The Staff concludes that the proposal is reasonable and recommends that the Application be approved with certain conditions.

In the additional information that STE filed at the direction of the Commission on April 30, 1999, STE states that, while it anticipates no new revenues during the life of the proposed obligation, it does anticipate increased revenues. The upgrades that STE will undertake with the proceeds of the proposed financing are compliant with the State Telecommunications Modernization Plan (STMP), which requires fiber optic transmission plant and higher data transmission rates to subscribers' residences. The new switch will permit STE to provide Custom Local Area Signaling Services (CLASS). The proposed financing will also permit STE to shorten subscribers' local loops and provide advanced data transmission services. The highly confidential and proprietary financial information filed by STE on April 30, 1999, shows that STE will be able to service the proposed obligation with existing revenues, including anticipated growth therein.

The Commission has reviewed the Application and accompanying documentation, the additional information filed by STE, including highly confidential and proprietary information, and the Staff recommendations. The Commission finds the proposed financial transaction to be reasonable and not detrimental to the public interest. The Commission will approve the requested financial transaction with certain conditions.

In its pleading filed on April 30, 1999, STE requested that the Commission not condition its approval of the proposed financing upon the conditions suggested by Staff. In particular, the condition in question is Staff's recommendation that STE maintain an equity ratio of forty percent or better throughout the life of the proposed

obligation. Alternatively, Staff recommends that STE obtain prior approval from the Commission to permit its equity ratio to fall below forty percent. This recommended condition is tied to STE's assurance to Staff that STE will only draw upon the proceeds of the proposed financing at an average rate of \$1,000,000 annually. STE states that its equity ratio may, from time to time, fall below forty percent and that, in some years, it may draw upon more than \$1,000,000 of the proceeds of the proposed financing. The Commission finds that the public interest requires that the conditions recommended by Staff be imposed in this case.

IT IS THEREFORE ORDERED:

1. That Steelville Telephone Exchange, Inc., is hereby authorized to perform the following:

- A. Borrow from the Rural Utilities Service an amount not to exceed \$6,231,000, and borrow from the Rural Telephone Bank an amount not to exceed \$3,635,100, in accordance with the terms and conditions of the Amending Telephone Loan Contract attached to the Application as Exhibits 1 and 2;
- B. Execute and deliver Mortgage Notes to the United States of America, payable through the Administrator of the Rural Utilities Service, and to the Rural Telephone Bank evidencing the loan amounts, substantially in the form of the Mortgage Notes attached to the Application as Appendices 3 and 4, in a total sum not to exceed \$9,866,100;
- C. Execute and deliver a restated mortgage, security agreement and financing statement for the purpose of securing the loans substantially in the form of the Restated Mortgage, Security Agreement and Financing Statement attached to the original Application as Appendix 5;
- D. Do and perform, or cause to be done and performed, all such other acts and things, as well as to make, execute and deliver any and all documents as may be necessary, advisable or proper to the end that the intent and purposes of this financing may be fully effectuated.

2. That Steelville Telephone Exchange, Inc., shall file in this case copies of all notes, mortgages, security agreements, financing statements, and other documents, executed and delivered with respect to the transactions herein authorized, within thirty days of the execution and delivery thereof.

3. That the proceeds realized from the financing transaction herein authorized shall be used for the purposes specified herein and no other.

4. That Steelville Telephone Exchange, Inc., shall henceforth maintain an equity ratio greater than or equal to 40.0 percent and that Steelville Telephone Exchange, Inc., shall not allow its equity ratio to fall below 40.0 percent without specific prior authority from this Commission.

5. That Steelville Telephone Exchange, Inc., shall continue to submit quarterly surveillance data reports as directed by the Staff of the Missouri Public Service Commission.

6. That the Staff of the Missouri Public Service Commission shall monitor the equity ratio of Steelville Telephone Exchange, Inc., and notify the Commission if it appears likely to fall below 40.0 percent.

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7. That nothing in this order shall be considered a finding by the Commission of the value of this transaction for ratemaking purposes, and the Commission reserves the right to consider any ratemaking treatment to be afforded the transaction herein involved in a later proceeding.

8. That this order shall become effective on June 8, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

In the Matter of the Investigation into the Earnings of Rock Port Telephone Company.

Case No. TR-98-349
Decided May 27, 1999

Telecommunications §14. The Commission approved a stipulation and agreement that established rates for a telephone company.

ORDER APPROVING STIPULATION AND AGREEMENT

In May of 1997, the Staff of the Public Service Commission (Staff) began a per books review of the earnings of Rock Port Telephone Company (Rock Port). Staff's audit was based upon the twelve months ending December 31, 1996, updated for known and measurable changes occurring during 1997. Upon completion of its preliminary earnings analysis, the Staff began discussions with Rock Port. Staff and Rock Port entered into a Stipulation and Agreement that was filed with the Commission on February 13, 1998.

Along with the Stipulation and Agreement, Staff and Rock Port filed a Motion to Open Docket. On March 2, 1998 the Commission issued an Order Establishing Case, Giving Notice and Setting Intervention Period. That order required that any party wishing to intervene in the case file an application to do so no later than March 30, 1998. Southwestern Bell Telephone Company (SWBT) and AT&T Communications of the Southwest, Inc. (AT&T) filed timely applications to intervene and were made parties to this case by the Commission on April 14, 1998. An early prehearing conference was held on May 1, 1998. Following that conference, each of the parties who did not sign the Stipulation and Agreement - SWBT on May 18, 1998, AT&T on June 30, 1998 and the Office of the Public Counsel (Public Counsel) on July 9, 1998 - filed a letter with the Commission, indicating that it did not oppose the Commission's approval of the stipulation and agreement. On October 7, 1998 the Commission issued

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an Order Directing Supplemental Filing that ordered Rock Port to file a supplemental statement regarding the revenue effect of new depreciation rates and indicating whether or not its customers can call toll free among its exchanges. Rock Port complied with that order by filing a Supplemental Filing on October 19, 1998. The Commission found that it had more questions and on April 20, 1999, the Commission issued an Order Directing Staff to File Supplemental Memorandum. The Staff complied with that order by filing a Supplemental Memorandum on April 30, 1999.

In the Stipulation and Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, have the transcript read by the Commission and to judicial review. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

Public Counsel, SWBT and AT&T did not sign the Stipulation and Agreement and therefore it must be treated as a Nonunanimous Stipulation and Agreement. 4 CSR 240.115(3) provides that after a nonunanimous stipulation and agreement is served on all the parties, "each party shall then have five (5) days from the receipt of the notice to file a request for hearing with the commission. Failure to file a timely request for hearing shall constitute a full waiver of the party's right to a hearing." Public Counsel, SWBT and AT&T have all filed letters with the Commission indicating that they did not object to the Commission approving the Stipulation and Agreement. No party has filed a request for hearing. Therefore, Public Counsel, SWBT and AT&T have waived their right to request a hearing.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on February 13, 1998 by the Staff of the Public Service Commission and Rock Port Telephone Company is hereby approved (See Attachment A).

2. That this order shall become effective on June 8, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur

Woodruff, Regulatory Law Judge

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EDITOR'S NOTE: The Stipulation and Agreement in this case (Attachment A) has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of Missouri RSA No. 7 Limited Partnership d/b/a
Mid-Missouri Cellular's Petition for Arbitration Pursuant to 47
U.S.C. Section 252 to Establish an Interconnection Agreement
with Southwestern Bell Telephone Company.***

*Case No. TO-99-279
Decided June 3, 1999*

Telecommunications §46.1. Interconnection agreement submitted in compliance with Commission's Arbitration Order was approved as meeting the requirements of the Telecommunications Act of 1996.

ORDER APPROVING INTERCONNECTION AGREEMENT

On April 8, 1999, this Commission issued its Arbitration Order in this case. That order required the parties, Southwestern Bell Telephone Company (SWBT) and Mid-Missouri Cellular (MMC), to file a conforming interconnection agreement by May 4, 1999. The parties filed their agreement on May 6, 1999, and simultaneously moved for leave to file it out-of-time. The Commission granted leave by order issued on May 19, 1999. On May 28, 1999, the parties filed certain appendices to the proposed agreement, which they had neglected to file with the agreement itself.

On May 24, 1999, the Commission issued a Revised Order Directing Notice, setting deadlines for parties wishing to request a hearing, participate without intervention, or to file comments. No requests for hearing, applications to participate or comments were filed.

The Staff of the Commission (Staff) filed a Memorandum on June 1, 1999, recommending that the proposed agreement be approved. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to participate or requested a hearing, the Commission may grant the relief requested based on the verified application.

*See page 102 for another order in this case.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection agreement arbitrated between an incumbent local exchange company and a wireless telecommunications company. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

The Staff Memorandum recommends that the proposed agreement be approved, and notes that the agreement meets the limited requirements of the Act in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest. Staff states that the proposed agreement “conforms to the Commission’s Order, if not by letter then in spirit.” Staff recommended that the Commission direct MMC and SWBT to submit a copy of the executed interconnection agreement with the pages numbered seriatim, and to submit any further modifications or amendments to the Commission for approval.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the proposed agreement and Staff’s recommendation. Based upon that review, the Commission has reached the conclusion that the proposed agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and implementation of the agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

Modification Procedure

This Commission’s first duty is to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission’s role of review and approval to be effective, the Commission must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). This duty is in keeping with the Commission’s practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission. 4 CSR 240-30.010.

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission’s offices. Any proposed modification must be submitted for Commission approval, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

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The parties shall provide the Telecommunications Staff with an executed copy of the interconnection agreement with the pages numbered seriatim in the lower right-hand corner. Modifications to the agreement must be submitted to the Staff for review. When approved, the modified pages will be substituted in the agreement which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained by the Telecommunications Staff in the Commission's tariff room.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties, and permit responses. The Commission may conduct a hearing if it is deemed necessary.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996, 47 U.S.C. 252(e)(1), is required to review arbitrated interconnection agreements. Under Section 252(e)(2)(B), it may only reject an arbitrated agreement upon a finding that it does not meet the requirements of Section 251 or the standards set forth in Section 252(d). Based upon its review of the proposed agreement between SWBT and MMC and its findings of fact, the Commission concludes that the proposed agreement meets the requirements of Section 251 and the standards set forth in Section 252(d). The Commission further concludes that the proposed agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement between Southwestern Bell Telephone Company and Missouri RSA No. 7 Limited Partnership, doing business as Mid-Missouri Cellular, filed on May 6, 1999, and May 28, 1999, is approved.

2. That the parties shall file an executed copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim at the bottom right hand corner of each page, no later than June 25, 1999. The parties shall file on the same date a notice in the official case file advising the Commission that the agreement has been submitted as required.

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3. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this Order.

4. That this Order shall become effective on June 5, 1999.

Kevin A. Thompson, Deputy Chief Regulatory Law Judge, by delegation of authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity.*

Case No. TO-99-254, et al
Decided June 10, 1999

Telecommunications § § 36, 39. The Commission determined that the Primary Toll Carrier Plan was incompatible with federally-mandated intraLATA toll dialing parity, and ordered that the plan end.

REPORT AND ORDER

BACKGROUND

This case was created on December 10, 1998, to investigate the issues of the Primary Toll Carrier (PTC) plan and IntraLATA Dialing Parity (ILDLP). The Commission considered similar issues in consolidated cases TO-97-217 and TO-97-220. The Commission has considered these issues together because one of the salient features of the PTC plan is the requirement that the Secondary Carriers (SCs) deliver all 1+ dialed intraLATA toll traffic to the PTCs¹. As a result, the implementation of ILDP necessarily requires at least modification, if not elimination, of the PTC plan. The Report and Order in consolidated cases TO-97-217 and TO-97-220 was reversed and remanded by the Cole County Circuit Court, largely on procedural grounds, and the Commission determined to address the issues in a new case, based upon evidence of record in the new case.

A procedural schedule was established, but then, on March 23, the Federal Communications Commission (FCC) issued an order that required, *inter alia*, all local exchange carriers (LECs) to file, no later than April 22, their plans for implementing intraLATA toll dialing parity. The FCC order also required that LECs whose plans have not been approved by a state commission by June 22 file

*See page 245 for another order in this case.

¹ The PTCs are Southwestern Bell Telephone Company, GTE Midwest, Inc., Sprint Missouri, Inc., and Fidelity Telephone Company.

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their plans for implementing intraLATA toll dialing parity with the FCC on that date. Because of the FCC's March 23 order, the procedural schedule was revised and LECs submitted their plans for approval on April 22, or shortly thereafter.

The Commission consolidated all the LECs' ILDP filings² with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue. The Commission will address the issues, or groups of issues, as they are set out in the list of issues prepared by the parties.

A. IntraLATA DIALING PARITY ISSUES

Because ILDP issues are discussed and resolved in Reports and Orders in each LEC's ILDP case issued simultaneously with this Report and Order, this Report and Order will only give a general overview of how those issues are resolved. Most of the decisions with respect to ILDP are being made in those Reports and Orders and are merely summarized here. A few issues that pertain more broadly are being addressed herein.

1. Customer Assignment Issues

Most of the ILDP plans provide that customers who do not choose an intraLATA toll carrier will be assigned to their interLATA carrier, or to the LEC or its affiliate. Only a few provide that such customers will continue to be served by the PTC. The Commission has generally approved the assignment of customers to the LEC or its affiliate. For plans that call for the assignment of customers to their interLATA carrier, the Commission has approved those plans with the modification that the PTC continue to provide service for a short transition period. For plans that call for the continuation of the PTC plan, the Commission has approved those plans with the modification that the PTC continue to provide service for only a short transition period, after which customers who have not chosen an intraLATA toll carrier will be assigned to their interLATA carrier.

²The ILDP plan filings consolidated herewith are: TO-99-487, TO-99-488, TO-99-489, TO-99-491, TO-99-492, TO-99-493, TO-99-496, TO-99-497, TO-99-498, TO-99-499, TO-99-500, TO-99-501, TO-99-502, TO-99-503, TO-99-504, TO-99-505, TO-99-506, TO-99-507, TO-99-508, TO-99-509, TO-99-510, TO-99-511, TO-99-512, TO-99-513, TO-99-514, TO-99-515, TO-99-516, TO-99-517, TO-99-518, TO-99-519, TO-99-520, TO-99-521, TO-99-522, TO-99-523, TO-99-524, TO-99-525, TO-99-526, TO-99-527, TO-99-528, TO-99-529, TO-99-530, TO-99-531, TO-99-535, TO-99-539, TO-99-559, TO-99-566.

Essentially, with the modifications ordered by the Commission, all customers will be assigned to the LEC or its affiliate as soon as possible, or they will be assigned to their interLATA carrier³ after a transition period.

2. Customer Notice Issues

Almost all the plans called for direct mailing of notice to customers, and the Commission approved that procedure. For the few that called for bill messages or bill inserts, or were not specific about the means used to notify customers, the Commission ordered modifications so that customers would receive notice by a separate mailing made within ten days of the effective date. The Commission modified most plans by requiring the LECs to use a notice tailored to the specific circumstances of its plan. The Commission directed SCs who will assign customers to their interLATA carrier if that carrier is willing to accept them to provide a notice that clearly explains AT&T Communications of the Southwest, Inc.'s (AT&T's) position. Since AT&T serves, on average, about seventy percent of the customers in SC exchanges, the Commission determined that it was in the public interest that customers be given notice that specifically stated that they would not be assigned to AT&T, but that AT&T would provide service if the customer requested it of AT&T directly.

To give customers the most direct notice possible, the Commission encourages the PTCs to investigate the possibility of placing "intercepts" on intraLATA toll calls placed by SC customers who have not chosen an intraLATA carrier during the last month of the transition period. An intercept would, before completing the call, inform the customer that the customer will not be able to complete the call as dialed after October 22, 1999, unless the customer chooses an intraLATA toll provider. Because there is no evidence on the record about the feasibility or the cost of using intercepts, the Commission will not order the PTCs to take this step, but the Commission will order them to investigate the possibility, and will urge them to take this step if possible.

3. Carrier Notice Issues

Almost all the plans provided that notice would be given to all interLATA carriers serving in the LEC's exchanges shortly after the plans were filed. AT&T was the only party that took the position that more than one notice was necessary. The Commission found that AT&T's stated reason for requiring additional notice was weak, and declined to accept it.

³ They will be assigned to their interLATA carrier if that carrier has notified the LEC that it will be fully participating in the intraLATA toll market. For customers of interLATA carriers that have not notified the LEC, customers will be considered to have chosen no Primary Interexchange Carrier (PIC) for intraLATA toll, and will have to dial a 101XXXX access number to make intraLATA toll calls.

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4. Cost Recovery Issues

Only a few LECs proposed to recover costs over anything other than total intrastate originating minutes. A few proposed to assess costs on terminating as well as originating minutes, and some parties suggested that costs only be assessed on intraLATA originating minutes. Only one LEC and only one IXC suggested recovery over anything but a three-year period. The Commission approved all plans, some as filed and some with modifications, to recover ILDP implementation costs over three years over all intrastate originating minutes.

Southwestern Bell Telephone Company (SWBT) proposed to begin recovery of its implementation costs after they are known; all the other LECs plan to begin recovery almost immediately and true up the recovery rate when actual costs are known. The Commission approved both of these proposals. Any LEC that wants to delay the beginning of its recovery until after costs are known, and thus avoid a true up procedure, may do so.

5. PIC Change

The Commission approved PIC change charge waiver periods of 180 days and ordered modifications to those plans that proposed a shorter period. The Commission did not modify any plan to change the amount of PIC charges after the waiver period, nor did it modify any plan to require a single charge for changing an interLATA PIC at the same time as an intraLATA PIC. While both of these issues may merit review in a LEC's rate case or in an investigatory case, they need not be addressed as part of implementing ILDP.

It is not appropriate to address LEC business practices regarding PIC changes in this case. If any party has a specific complaint about a specific LEC's business practices, it may file a formal complaint with the Commission. If any party believes that rules regarding business practices are necessary, it may file a petition for a rulemaking with the Commission.

B. PTC PLAN ISSUES

1. Resolution of the PTC Plan

There was general agreement regarding the termination of the PTC plan. Very few parties, and none of the LECs, took the position that it could continue for very long. This accord should perhaps not be surprising, since the PTCs and SCs alike agreed, in the Conceptual Framework, that:

In the event that intraLATA presubscription is implemented, the affected parties will have the option of withdrawing from the Conceptual Framework and canceling the associated contracts.

In fact, the parties planned to end it after five years even if intraLATA dialing parity had not been implemented, but the Commission did not accept the five-year period.

The Commission finds that the PTC plan is incompatible with competition. The requirement that all 1+ intraLATA toll traffic be delivered to the PTC is obviously

untenable in a competitive environment. Moreover, creating and maintaining a barrier to the PTCs' exit from a market they have been increasingly vocal about exiting is a hindrance to the development of competition.

The Commission need not, and does not, make a finding as to the validity of the PTCs' claims that they are losing money in providing intraLATA toll service to the SCs' customers. It is enough to find that the PTC plan is unworkable in a competitive environment.

In order to minimize the disruption and confusion that some customers may experience, the Commission has ordered that the PTC plan continue in a modified fashion in certain SC territories for a short (90 day) transition period. Issues about how intraLATA toll will be originated are all resolved in the Reports and Orders approving LECs' ILDP plans.

2. IntraLATA Toll Carrier of Last Resort

The parties spent a considerable amount of time and energy trying to pin down who had the IntraLATA Toll Carrier of Last Resort (ITCOLR) responsibility in the past, and when, if ever, that responsibility changed. However, almost no party took the position that designating an ITCOLR is necessary now. The evidence demonstrates that the three largest IXC's, as well as a number of smaller IXC's, are willing to serve customers in every exchange in the state. The Commission finds that it is not in the public interest to declare a carrier of last resort for intraLATA toll service. To require one carrier to be the carrier of last resort is not only unnecessary, it is anti-competitive. By definition, an ITCOLR bears a burden that none of its competitors do.

AT&T points out that, even though there are sufficient intraLATA toll providers now (or will be as soon as ILDP is implemented) to make an ITCOLR unnecessary, that situation might change if all these providers were to leave the market. The Commission finds that unnecessarily burdening a carrier now in an attempt to address that remote eventuality would likely do more harm than good. Furthermore, the parties that briefed the question of whether the Commission is required by statute to declare an ITCOLR all determined there was no such requirement.

3. If the PTC Plan is Eliminated

a. Network Issues

1. Signaling Protocol

The parties submitted considerable testimony regarding the capabilities of Feature Group "C" (FGC) and Feature Group "D" (FGD). FGC signaling protocol is, and has been for a long time, used across the country by LECs. FGD was introduced at the beginning of interLATA competition, and is used by IXC's. A small number of the SCs argue strenuously that all calls terminated to their customers, whether from IXC's or LECs, should, or must, be terminated using FGD. This group believes that FGD will give them more of the information they need to perform accurate billing.

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In general, allowing SCs the opportunity to capture more information about the calls terminated to them is certainly a worthwhile goal. Nonetheless, there are a number of insurmountable problems with mandating the use of FGD.

First, it is not necessary for the implementation of ILDP or for the termination of the PTC plan. The evidence does not support a conclusion that requiring the conversion from FGC to FGD is mandated by either the termination of the PTC plan or the implementation of ILDP. Rather it shows that some LECs are dissatisfied with FGC in the current PTC environment, and will continue to be dissatisfied with it in a post-PTC environment. Furthermore, there is no compelling evidence that the dissatisfaction is based on anything more than: 1. a distrust of the PTCs; 2. some preliminary analysis from which one might conclude that there is a discrepancy between the terminating minutes measured by a few SCs and those minutes as reported by the PTCs; and 3. perhaps a lack of business relationships with upstream carriers. There is no competent and substantial evidence that such a discrepancy, if any, between reported and measured minutes is substantial or widespread.

Second, there is evidence that by mandating the use of FGD and refusing to terminate calls passed using FGC, some SCs would not be able to complete all calls made to their customers. If the LECs do not convert to FGD, calls made to SC customers (for those few SCs that would demand FGD) would simply not be completed, and the calling customer would possibly get a message that the call could not be completed as dialed.

Third, the evidence clearly demonstrates that FGD as presently configured will not provide all the information the SCs want about calls terminated to them.

Fourth, the evidence shows that work is being done to improve FGC; there was not similar testimony with respect to FGD. Requiring a conversion to FGD may be a wasted investment, since FGC may in the future be enhanced to allow the SCs to capture the information they want. Currently neither FGC or FGD provide all the information sought, and it seems more likely that eventually FGC will provide more of it than FGD.

Finally, there is little concrete evidence about the cost of converting the LEC to LEC network to FGD, but what evidence there is certainly suggests that the cost will be great. The Commission will not order the industry to embark on a massive project to convert to another standard, at an unknown cost, to achieve uncertain benefits and possibly cause tangible harm to customers trying to place calls.

2. Trunking Arrangements

Some of the SCs argued that separate trunk groups should be established for Metropolitan Calling Area (MCA) traffic, and other non-chargeable traffic. In the past, MCA traffic has been handled on a "bill and keep" basis, meaning that the originating carrier bills the customer making the call and keeps the revenue. Typically, no call records have been created, the calls have not been measured, and they have been placed on common trunks. The evidence reflects that, independent of any

Commission mandate, some of the MCA traffic is now being placed on separate trunks.

The argument in favor of separating, or separately measuring, MCA traffic generally is that doing so will allow the SCs to more accurately measure their terminating traffic. Since MCA traffic is not currently separately delivered or measured, the SCs have no way of knowing what percentage of its traffic is MCA (for which it is appropriately not compensated under the present billing scheme).

Although placing MCA traffic on separate trunks may be economically beneficial to the SCs, the record is devoid of any hard evidence of the number of trunks involved or the cost of moving the MCA traffic to separate trunks. Furthermore, there is nothing inherent in the implementation of ILDP or the termination of the PTC plan that requires a change to the current bill and keep arrangement for MCA traffic. Finally, the Commission notes that it has recently opened a case (Case No. TO-99-483) for the express purposes of investigating the continued provision of MCA service.

The Commission will not in this case require the changes necessary to separate MCA traffic at an unknown cost.

b. Actual Terminating Usage

Much of the traffic that is terminated to the SCs is carried over common trunk groups. Although the PTCs deliver this traffic, they do not originate all of it. Some of it is originated by other carriers upstream from the PTC, and it may be interstate or intrastate. Terminating traffic can be measured at almost all SCs' end office switches, but an SC will not have information about the call's jurisdiction or the identification of the responsible carrier.

Many of the SCs argued that they should be able to measure terminating minutes at the terminating end office, and bill the carrier that delivered that traffic to the terminating tandem or end office for any discrepancy between the minutes shown on the originating records and the measured minutes. As noted above, prudent business practices dictate that the SCs move toward acquiring more information about, and authority to bill for, calls terminated to them. However, there is a fundamental inequity in this residual billing scheme: Included in the minutes terminated to the SCs are some minutes of use for which the SCs are not entitled to be compensated. These include MCA traffic delivered over common trunks, interstate intraLATA traffic, and possibly Feature Group A traffic and calls that merely "transit" the PTC's network. Adopting this scheme would guarantee that some SCs will be over-compensated when there is little evidence that they are under-compensated under the present scheme.

However, the Commission will order the provision of standard "Category 11" records. This will provide the SCs better information about calls terminated to them. Any additional expense this will cause the PTCs⁴ is dwarfed by the elimination of the revenue losses they assert they are suffering under the PTC plan. Although the SCs

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generate Category 92-99 records for calls they originate to pass to the PTCs, they do not currently receive them. The PTCs propose to provide Category 92-99 records which would require the SCs to develop a system to bill using these records, or require the SCs to convert them to Category 11 records. 11-01 records are an industry standard, and all of the SCs currently use them. They are the records used in the carrier access billing system. The Commission finds that requiring the PTCs to provide industry standard 11-01 records is in the public interest, and will order these records to be provided by April 1, 2000.

c. Tariff/Contract Issues

Billing and Collection services are presently provided under tariff provisions. Some of the SCs would like to “detariff” these services as part of their tariff filing to implement ILDP and achieve revenue neutrality from the termination of the PTC plan. While detariffing may be beneficial to the SCs, it need not be done as part of this filing. Furthermore, while changes in the volume of billing and collection services resulting from the elimination of the PTC plan may be appropriate to capture in a revenue neutral filing, a voluntary reduction in the price of these services would not.

The joint provisioning of Private Line existed before the PTC plan was created; there is no reason that the termination of the PTC plan should also terminate this arrangement. While it may be beneficial to the SCs converting jointly provided private line to some other arrangement is not necessitated by, or even closely related to, the termination of the PTC plan or the implementation of ILDP.

Interstate intraLATA traffic⁴, like MCA traffic, has in the past been generally treated as bill and keep, and like MCA traffic, there is nothing inherent in the termination of the PTC plan or the implementation of ILDP that requires a change to this arrangement. Like the other tariff/contract issues, it may be a good idea to move toward a different arrangement, but it need not be done as a part of this case.

⁴ The PTCs estimated that, for all three, the total cost would be around \$700,000. However, they testified that, if a billing vendor is used to convert the records, the cost could be less. The record is not entirely clear whether the estimates were for the conversion of summary records (such as 11-50 and 92-99) or of individual records (such as 11-01 and 92-01). Even if the estimates were for the conversion of summary records, it should not cost considerably more to convert individual records.

⁵ The Kansas City LATA and the St. Louis LATA extend into Kansas and Illinois, respectively, so calls from Missouri into Kansas or Illinois or from parts of those states into Missouri may be within a LATA and interstate.

3. Revenue Neutrality

The Commission has, in the LEC ILDP plan filings of the companies that sought revenue neutrality, proposed a mechanism that will allow them to achieve it. This mechanism is fair, and perhaps even generous, to the LECs. They will be allowed to implement a rate increase with virtually no regulatory lag, based upon projections they admit are of questionable accuracy. If it turns out that the LEC did in fact need the revenue neutrality surcharge to continue to earn a reasonable return, it need not refund any of it. A refund will only be required if an audit indicates that the LEC would have earned a reasonable return without the surcharge. Even then, the only refund it will be required to make is the difference between what it collected through the surcharge and the amount it needed to collect to earn a reasonable return. This is almost a no-lose proposition for the LEC; the only way it will fail to earn a reasonable return is if its projections of revenue losses are too low. It is also a no-lose proposition for the LEC's customers; there is no way that the LEC can turn its revenue neutral filing into a windfall profit.

Each LEC that implements revenue neutrality should have some latitude to propose the rate design it believes is appropriate. The Commission will provide some guidance here. Since the express purpose of a revenue neutrality filing is to offset lost revenues by increasing rates, it would be inappropriate to lower any rates (except for those reductions resulting from the elimination of the CCL cap). Bringing interLATA and intraLATA access rates to, or closer to, parity is a worthwhile goal for most LECs, as is the elimination of the intraLATA Carrier Common Line rate cap. There seems to be little or no disagreement on the merit of these goals. In order to address concerns over their inability to identify the jurisdiction of calls, the SCs may want to first address any disparities between the terminating intraLATA and interLATA access rates. It may also be worthwhile to bring originating access and terminating access to, or closer to, parity. As discussed above, each LEC that requests revenue neutrality will file a general rate case as specified in the Report and Order approving its Report and Order once it has operated for a period of time after the termination of the PTC plan. In this rate case, all relevant factors and the LEC's entire rate design will be examined.

C. PROCEDURAL ISSUES

Exhibits 77, 94, and 95 were late-filed. Parties were given time to object to the admission of these exhibits, and no objections were made. Therefore, they will be admitted.

The Staff of the Commission filed its brief late, along with a motion to accept it late. No party has been harmed by the late filing, and the motion will be granted.

As discussed above, many of the issues the SCs raise are not directly tied to the implementation of ILDP or to the resolution of the PTC plan. They are, nonetheless, important issues that will need to be addressed as competition develops. Accordingly, the Commission will establish a case to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

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CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law.

The parties to this case are generally certificated telecommunications service providers within the state of Missouri, subject to the Commission's jurisdiction under Section 386.250(2), RSMo Supp. 1997. The Primary Toll Carrier Plan (PTC Plan) which is at issue was approved by the Commission by Report and Order issued October 23, 1987, in Case No. TO-84-222.

The Federal Telecommunications Act of 1996 and Sections 392.185 and 392.455, RSMo Supp. 1997, were designed to institute competition in the telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, states that "the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; . . . (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest . . ."

IT IS THEREFORE ORDERED:

1. That the Primary Toll Carrier plan shall continue in modified form, as discussed in Reports and Orders approving local exchange carriers' intraLATA dialing parity plan, for a transition period of up to ninety days after July 22, 1999.

2. That the Primary Toll Carrier plan shall be terminated on October 20, 1999.

3. That, after April 1, 2000, any local exchange company may request that it be provided, without compensation, either industry standard Category 11-01 or 92-01 records for any calls terminated to it for which originating records are created and passed.

4. That the primary toll carriers shall investigate, and may implement, call intercepts as discussed herein.

5. That late-filed Exhibits 77, 94, and 95 are admitted into the record.

6. That the Public Service Commission Staff's motion to late file its brief is granted.

7. That Case Number TO-99-593 is established to investigate signaling protocols, call records, trunking arrangements and traffic measurement.

8. That all motions not previously ruled upon by the Commission in this case are hereby denied and all objections not previously ruled upon are hereby overruled.

9. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

In the Matter of Southwestern Bell Telephone Company's IntraLATA Long Distance Dialing Parity Plan*

Case No. TO-99-535
Decided June 10, 1999

Telecommunications § 33. The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.

BACKGROUND

On April 22, 1999, Southwestern Bell Telephone Company (Southwestern Bell) filed an application with the Commission requesting approval of its plan to implement intraLATA toll dialing parity (ILDLP). This filing was made pursuant to a March 23 order of the Federal Communications Commission (FCC) that required all local exchange companies (LECs) to make such filings. The FCC order, as the Commission intends to comply with it¹, requires the Commission to approve each LEC's ILDLP by June 22. It also requires that, assuming the Commission approves the plan by June 22, each LEC implement its plan by July 22. The Commission consolidated Southwestern Bell's ILDLP plan filing, and all the LECs' ILDLP filings, with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

Southwestern Bell's ILDLP Plan

Southwestern Bell's plan provides that its customers will receive ILDLP on July 22, assuming the Commission's order approving its plan is effective on June 21. Southwestern Bell intends to allow its customers to select a carrier for interLATA toll calls and to select the same or a different carrier for intraLATA toll calls.

*This order contains changes approved by the Commission in orders issued on June 17, 1999 and June 23, 1999. See pages 176 and 245 for orders regarding Case No. TO-99-254, et al.

¹ The order provides that, if a state commission has not approved a LEC's plan by June 22, that LEC must file the plan with the FCC's Common Carrier Bureau for approval. Since the Commission is herein approving Applicant's plan, this provision of the FCC's order is moot.

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Cost Recovery

Southwestern Bell proposes to recover the incremental costs of implementing ILDP over a three-year period as a new access rate element assessed on total intrastate originating minutes.

The introduction of competition into the 1+ intraLATA toll will allow end users originating calls to choose the company that will carry those calls. The beneficiaries of this introduction of competition are the end-users and the interexchange carriers who will be able to offer “one-stop shopping” for all long-distance services on a 1+ basis. Customers will be more likely to use an interexchange carrier for toll traffic when they can do so without having to dial an access code followed by “1” plus the number. If the Commission were to limit recovery to a surcharge on intraLATA traffic as some parties have proposed, Southwestern Bell, the primary intraLATA toll carrier, would bear a heavy portion of the costs of providing a service that will likely decrease its toll market share. Spreading the costs over all intrastate minutes as Southwestern Bell proposes is a reasonable means of recovering the cost of implementation.

This recovery method is the same as the one the Commission approved for Sprint and GTE in their implementation plans. Although the Commission noted that there was no precedential value to that decision, and that each plan recovery method would be evaluated on its own merits, the reasoning that led the Commission to approve this method for GTE and Sprint is equally applicable here.

Southwestern Bell proposes to file a tariff to begin recovery of these costs once they are known. Some parties criticized this approach because Southwestern Bell will not begin paying any of these costs until after it will have lost a portion of its market share. Southwestern Bell states that starting recovery after the costs are known will avoid using estimated costs and then adjusting them once actual costs are known. The Commission finds that Southwestern Bell’s approach is reasonable and will approve it. The Commission is approving the “estimate and true up” approach for all the other LECs, and either approach, if done properly, will allow a LEC to recover its ILDP costs (and no more) from appropriate entities.

PIC Change Charge Waiver

Southwestern Bell proposed a 180-day waiver of primary interexchange carrier (PIC) change charges. Virtually all parties supported or did not oppose such a waiver. The Commission finds that this period is appropriate for the waiver of PIC charges.

Customer Notification

Southwestern Bell intends to notify its customers of the implementation of ILDP by a “bill message” in the customers’ first bill following Commission approval of the plan. Southwestern Bell does not intend to ballot its customers.

The public will be best served if information regarding the implementation of ILDP is conveyed in such a way as to capture a reader’s attention. A bill message or a bill insert is all too easily missed or ignored. Despite the increased cost of a separate

mailing over a bill message or a bill insert, the Commission finds that the increased readership that a separate mailing is likely to achieve will outweigh the cost. The Commission will order Southwestern Bell to notify its customers by a separate mailing.

The Commission finds that the content of the notice should be as clear and concise as possible, while at the same informing customers of the choices they have, and the consequences of those choices. If a notice did not inform customers of all the carriers that they can choose, it would not serve the public interest. The Commission will direct Southwestern Bell to provide customers upon request a list of all carriers authorized and obligated to provide intraLATA toll service in Southwestern Bell's territory. Accordingly, the text of the notice should be as follows:

IMPORTANT PUBLIC INTEREST NOTICE

Currently, your intraLATA 1+ and 0+ calls (long distance calls to nearby communities to which long distance charges apply) are carried by Southwestern Bell Telephone Company. Effective July 22, 1999, you will be able to choose the company you would like to carry these calls.

You can contact your local Southwestern Bell Telephone Company business office or the company you choose to provide this service. If you want to continue using Southwestern Bell Telephone Company to carry these calls, you do not need to do anything.

You can contact your local Southwestern Bell Telephone Company business office for a list of all companies authorized to provide intraLATA toll service in Missouri.

Please note that the rates and services of each of these companies may be different from each other, and from the rates and services you currently receive from Southwestern Bell Telephone Company. Particularly if you make a lot of calls, or make long calls (such as to connect to an internet service provider (ISP) through a dial-up connection), you should check with your local Southwestern Bell Telephone Company business office and the long distance company you choose to find out whether long distances charges will apply to these calls.

From July 22, 1999 until January 22, 1999, you will be able to choose a company other than Southwestern Bell Telephone Company and you will not be charged for making the change. If you want to change again, or make a change after January 22, 1999, you will incur a charge of \$5.83.

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Carrier Notification

Southwestern Bell stated that it intends to notify interexchange carriers (IXCs) that currently provide service in its exchanges. The IXCs are to provide applicant with a list of exchanges in which they plan to offer intraLATA toll service.

AT&T was the only party to Case No. TO-99-254 et al. that took the position that a second notice to carriers was necessary. AT&T believed that a second notice after the Commission issues its order on the ILDP plan would allow IXCs to decide whether to participate based on the specifics of the Commission's order. However, as a party, AT&T will be well aware of the specifics of the Commission's order. Furthermore, AT&T testified at the hearing that the specifics of any Commission order approving an ILDP plan would not change its decision on how it will participate. The Commission finds that one notice to IXCs that currently provide service in Southwestern Bell's exchanges is sufficient.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

Southwestern Bell is a public utility and a telephone company subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission require LECs such as Southwestern Bell to implement intraLATA equal access. Southwestern Bell has submitted an intraLATA dialing parity implementation plan to this Commission for approval. Based upon its findings of fact, the Commission has determined that the plan should be approved as modified.

IT IS THEREFORE ORDERED:

1. That the intraLATA dialing parity plan filed by Southwestern Bell Telephone Company on April 22, 1999 is approved with the modifications discussed herein.
2. That Southwestern Bell Telephone Company shall file tariffs implementing intraLATA dialing parity consistent with this Report and Order.
3. That, no later than ten days after the effective date of this order, Southwestern Bell Telephone Company shall notify its customers, as discussed herein, of the availability of intraLATA toll dialing parity.
4. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

In the Matter of the Petition of Goodman Telephone Company for Approval of an IntraLATA Dialing Parity Plan*

Case No. TO-99-504
Decided June 10, 1999

Telecommunications § 33. The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.

BACKGROUND

On April 22, 1999, Goodman Telephone Company (Goodman) filed an application with the Commission requesting approval of its plan to implement intraLATA toll dialing parity (ILDLP). This filing was made pursuant to a March 23 order of the Federal Communications Commission (FCC) that required all local exchange companies (LECs) to make such filings. The FCC order, as the Commission intends to comply with it¹, requires the Commission to approve each LEC's ILDP by June 22. It also requires that, assuming the Commission approves the plan by June 22, each LEC implement its plan by July 22. The Commission consolidated Goodman's ILDP plan filing, and all the LECs' ILDP filings, with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

*See pages 176 and 245 for orders regarding Case No. TO-99-254, et al. The Commission issued other orders similar to this involving various telephone companies and this issue. Please see the Unreported section of this book.

The Commission, in an order issued on July 15, 1999, denied a rehearing in this case.

¹ The order provides that, if a state commission has not approved a LEC's plan by June 22, that LEC must file the plan with the FCC's Common Carrier Bureau for approval. Since the Commission is herein approving Applicant's plan, this provision of the FCC's order is moot.

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Goodman's ILDP Plan

Goodman's plan provides that its customers will receive ILDP on July 22, 1999². Goodman intends to allow its customers to select a carrier for interLATA toll calls and to select the same or a different carrier for intraLATA toll calls.

Assignment of Customers and Termination of the PTC Plan

Goodman proposes that Southwestern Bell Telephone continue to provide intraLATA toll service for some period of time after the implementation of ILDP on July 22 to all customers that have not chosen an intraLATA toll carrier. Goodman estimates that this period would be approximately ninety days and that, during this period, a second notice and a ballot would be sent to customers who have not chosen an intraLATA toll carrier. Goodman believes that this approach will reduce customer confusion and give customers a greater opportunity to choose a carrier before one is chosen for them (or they are treated as having no Primary Interexchange Carrier for intraLATA toll, or "no PICed"). Goodman has not made a final decision on how customers will be treated who still have not affirmatively picked an intraLATA toll carrier by the end of this period.

Because the period between the time customers get notice and the beginning of ILDP is so short, the Commission will order the PTC plan to continue in modified form for a period of 90 days. The Commission believes that some customers might not pick an intraLATA toll carrier by July 22. Particularly in light of AT&T's limited participation, this could result in a significant number of customers having to use 101XXXX dialing. By extending the PTC plan for a short period, customers will have a much greater opportunity to choose the carrier they want to carry intraLATA toll calls.

The Commission agrees that an additional notice has the potential to alleviate some customer confusion. However, Goodman's approach will also increase implementation costs (which ultimately will be borne by customers) and hinder the development of competition. The Commission finds that the added cost of an additional notice and a ballot outweighs the potential reduction in customer confusion.

The Commission will order Goodman to modify its plan to provide a single notice to customers. The Commission will also order Goodman to assign each customer that has not chosen an intraLATA toll carrier by October 20 to the customer's interLATA toll carrier if that carrier has notified Goodman that it is willing to be on a customer notification list. If the customer's interLATA toll carrier has not notified Goodman, then Goodman should consider the customer a "no PIC." As discussed below, the notice that Goodman is to mail directly to

² Goodman's plan indicates that it will eliminate the PTC plan shortly after the implementation of dialing parity. The rationale is that it will be cheaper and administratively easier to have carriers other than the PTC begin carrying calls at the beginning of an access billing cycle. As a result, customers can choose an intraLATA toll carrier on and after July 22, but that customers that do not choose will continue to be served by the PTC until August 13.

customers will clearly explain options and consequences, and Goodman will waive PIC change charges for a 180-day period. As a result, even though some customers might be inconvenienced to find that they have no PIC when they try to dial an intraLATA toll call, they will be able to choose a carrier at no cost with a call to the Goodman business office, or to one of the available long distance carriers.

During this short transition period, the PTCs will not be required to offer new services to customers in Goodman exchanges, to provide intraLATA toll services to new customers in SC exchanges, or to take Billing and Collection services (B&C) from Goodman. It would not be in the public interest for existing customers to get accustomed to new services that will no longer be available (at least from a PTC) a short time later. By the same token, it would not be in the public interest to allow new Goodman customers to take intraLATA toll service from a PTC only to find that service from that carrier is no longer available a short time later. Finally, in the transition to competition, it would not be conducive to the development of competition to require a PTC to purchase B&C from Goodman when none of the new entrants has a similar requirement. The PTCs will be required during the transition to carry all intraLATA toll traffic from Goodman customers who have not chosen a carrier.

The Commission will order the PTC plan to continue in this modified form in Goodman's territory until October 20, 1999.

Cost Recovery

Goodman proposes to recover the incremental costs of implementing ILDP over a three-year period as a surcharge on the Carrier Common Line (CCL) element for all originating intrastate access minutes.

The following incremental costs were included by Goodman for recovery: preparing and gaining approval of ILDP; customer notification; business office training; increases in business office work; network software; billing system modifications; network translations; and a 90-day waiver of PIC change charge. The Commission finds that all of these types of costs are appropriate for recovery. Because Goodman's estimates of these costs will be revised once actual costs are known, the Commission will not enter a finding as to the accuracy of these estimates.

Spreading the costs over all intrastate originating minutes is a reasonable means of recovering the cost of implementation. To limit the recovery to only intraLATA originating minutes would raise those rates too much at a time when competition in this market is just starting. AT&T's proposal to spread the costs over a period longer than three years would simply drag the process out. The Commission finds that it would not be in the public interest for LECs to still be recovering the costs of ILDP implementation as much as eight years in the future.

This recovery method is the same as the one the Commission approved for Sprint and GTE in their implementation plans. Although the Commission noted that there was no precedential value to that decision, and that each plan recovery method would be evaluated on its own merits, the reasoning that led the Commission to approve this method for GTE and Sprint is equally applicable here.

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The Commission will accept Goodman's cost estimates used to calculate the charges in its tariff, and will order Goodman to provide the Staff of the Commission with the actual costs when available. It will also order Goodman to provide the Staff with an annual accounting of the progress of its cost recovery. The Staff and Goodman should monitor the recovery to ensure the temporary additive is ended as soon as the actual cost of implementation is recovered.

PIC Change Charge Waiver

Goodman proposed a 90-day waiver of primary interexchange carrier (PIC) change charges. The Commission finds that this period is too short for the waiver of PIC charges. This period would not allow customers to fully understand the changes with which they are faced, nor to fully explore the options they have. Furthermore, a 90-day period would end just at the time some customers are assigned to their interLATA long distance company or no-PICed. The Commission will order Goodman to implement a PIC change charge waiver period of 180 days.

Customer Notification

Goodman's plan states that it will notify its customers of the implementation of ILDP by a separate mailing to each of its customers. This is the appropriate means of notifying customers, and the Commission will approve it.

The Commission finds that the content of the notice should be as clear and concise as possible, while at the same informing customers of the choices they have, and the consequences of those choices. If a notice did not inform customers as much as possible on the questions that are likely to concern them, it would not serve the public interest³. The Commission will direct Goodman to provide customers upon request a list of all carriers authorized and obligated to provide intraLATA toll service in Goodman's territory. The Commission will direct Goodman to provide customers the following notice:

IMPORTANT PUBLIC INTEREST NOTICE

Currently, your intraLATA 1+ and 0+ calls (long distance calls to nearby communities to which long distance charges apply) are carried by Southwestern Bell Telephone Company. This service is called intraLATA toll service. Effective July 22, 1999, you will be able to choose the company you would like to carry these calls.

³ Because AT&T is the selected interLATA carrier for such a large number of customers in SC exchanges such as Goodman's, AT&T is specifically mentioned. The Commission finds that requiring Goodman to state AT&T's position in the customer notice is necessary to minimize customer confusion.

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Attached is a list of the companies that have told Goodman Telephone Company that they are willing to carry these calls. You should contact your local Goodman Telephone Company business office or the company you choose to provide this service. If you do not call Goodman Telephone Company or a long distance company of your choice and choose a company to provide this service, **you will automatically be assigned to your current long distance (interLATA) company if it appears on the attached list.**

Even if your current long distance (interLATA) company is not on the attached list, it may be willing or required by law to provide this service*. You can contact your local Goodman Telephone Company business office for a list of all companies authorized to provide intraLATA toll service in Missouri. If your current long distance (interLATA) company is not on the attached list, and you want it to carry these calls in addition to the long distance calls it now carries, you should contact it.

If your current long distance (interLATA) company is not on the attached list and you do not choose another company, **after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls** until you do choose another company. You will still be able to make these calls by dialing a "101XXXX" access number; a list of these "101XXXX" access numbers available to you is attached. You can also get a list of these numbers from your local Goodman Telephone Company business office.

Please note that the rates and services of each of these companies may be different from each other, and from the rates and services you currently receive from Southwestern Bell Telephone Company. Particularly if you make a lot of calls, or make long calls (such as to connect to an internet service provider (ISP) through a dial-up connection), you should check with your local Goodman Telephone Company business office and the long distance company you choose to find out whether long distances charges will apply to these calls.

For 180 days after July 22, you will be able to choose a company to provide this service and you will not be charged for making the change. **If your current long distance (interLATA) company is not on the attached list and you do not choose another company, after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls until you do choose another company.** If you want to change after your initial choice, or make a change after January 20, 2000, you will incur a charge of \$5.00.

*Even though AT&T is not on the attached list, it will carry these calls if you request it.

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Carrier Notification

Goodman stated that it intends to notify interexchange carriers (IXCs) that currently provide service in its exchanges within a week of the filing of its plan.

AT&T was the only party to Case No. TO-99-254 et al. that took the position that a second notice to carriers was necessary. AT&T believed that a second notice after the Commission issues its order on the ILDP plan would allow IXCs to decide whether to participate based on the specifics of the Commission's order. However, as a party, AT&T will be well aware of the specifics of the Commission's order. Furthermore, AT&T testified at the hearing that the specifics of any Commission order approving an ILDP plan would not change its decision on how it will participate. The Commission finds that one notice to IXCs that currently provide service in Goodman's exchanges is sufficient.

Revenue Neutrality

Goodman proposes a revenue neutrality adjustment that will be implemented by raising intraLATA Carrier Common Line (CCL) rates. Goodman proposes to raise these rates as necessary to maintain revenue neutrality, up to the level of interLATA CCL rates. If this increase is not sufficient, Goodman proposes to raise both interLATA and intraLATA rates and keep them in parity. The rates are also calculated to eliminate the CCL cap, or discounted CCL rate.

The Commission will allow Goodman to achieve revenue neutrality at the time it implements its ILDP plan. It will do so, however, under a mechanism that allows Goodman to achieve its desired revenue neutrality while at the same time protecting Goodman's customers from the possibility that they will be overcharged as a result of the revenue neutrality filing.

Because an interim filing is necessarily ancillary to a permanent increase in rates (see, *e.g.*, *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, (Mo. App. 1976)) the Commission will approve Goodman's revenue neutrality filing if it commits to filing a general rate case in which all relevant factors are to be examined no sooner than eight months and no later than ten months after October 20, 1999. Furthermore, the tariffs implementing revenue neutrality should clearly reflect Goodman's agreement that the increase they implement is to be interim and subject to refund. The interim period over which they are effective shall be from October 20 until the Commission resolves the rate case. The parties shall address in the rate case, the issues of the amount of any decrease in revenues Goodman suffered as a result of the elimination of the PTC plan, and whether the interim tariffs over-recovered the decrease in revenues. Goodman shall bear the burden of proof on these issues. Goodman shall refund any amount determined to be over-recovery to each of the entities that paid the interim increase, according to the percentage that entity paid. Interest shall be applied to the refund at the rate of nine percent per annum.

Goodman has proposed that its interim increase be subject to refund based upon an examination of actual revenue changes for a period of time after the termination

of the PTC plan, and the Commission has accepted that proposal. Therefore, the questions of the accuracy of Goodman's estimates of revenue losses, and even of the categories of revenue losses attributable to the elimination of the PTC plan⁴, need not be resolved at this time; they will be addressed in Goodman's rate case. In addition, the Commission finds that the rate elements that Goodman proposes to adjust are appropriate and sufficiently competitively neutral.

So that the Commission and its Staff can examine the revenue neutrality calculations, the Commission will order Goodman to file all supporting documentation with its revenue neutrality tariffs.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

Goodman is a public utility and a telephone company subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission require LECs such as Goodman to implement intraLATA equal access. Goodman has submitted an intraLATA dialing parity implementation plan to this Commission for approval. Based upon its findings of fact, the Commission has determined that the Plan should be approved as modified.

IT IS THEREFORE ORDERED:

1. That the intraLATA dialing parity plan filed by Goodman Telephone Company on April 22, 1999 is approved with the modifications discussed herein.
2. That Goodman Telephone Company shall file tariffs implementing intraLATA dialing parity consistent with this Report and Order.
3. That, as soon as they are available, Goodman Telephone Company shall submit to the Staff of the Commission data showing the actual cost of implementing intraLATA dialing parity. If necessary, Goodman Telephone Company shall file revised tariffs to reflect the difference between the estimated costs and the actual costs.
4. That, on or about October 1 of each year, Goodman Telephone Company shall submit to the Staff of the Commission data showing the status of cost recovery.
5. That Goodman Telephone Company the Staff of the Commission shall monitor the progress of cost recovery and Goodman Telephone Company shall file tariffs with the Commission to eliminate the cost recovery surcharge so that only the actual costs are recovered.
6. That, if Goodman Telephone Company files tariffs to provide revenue neutrality, it shall file a general rate case no sooner than eight months and no later than ten months after October 20, 1999.

⁴The Commission notes, without deciding, that certain types of revenue losses that Goodman includes in its revenue neutral calculation may not be attributable to the elimination of the PTC plan. While such revenue losses may be appropriate to consider in setting "going forward" rates in the rate case, if they are not attributable to the elimination of the PTC plan, they would not have been appropriate in the revenue neutral calculation and Goodman may be required to refund them.

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7. That, if Goodman Telephone Company files tariffs to provide revenue neutrality, it shall file supporting documentation with the tariffs.

8. That, within ten days of the effective date of this order, Goodman Telephone Company shall notify its customers, as discussed herein, of the availability of intraLATA toll dialing parity.

9. That the Primary Toll Carrier plan is modified and continued only to the extent necessary to accommodate the modifications discussed herein.

10. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

**In the Matter of the Petition of BPS Telephone Company for
Approval of an IntraLATA Dialing Parity Plan***

Case No. TO-99-498
Decided June 10, 1999

Telecommunications § 33. The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.

BACKGROUND

On April 22, 1999, BPS Telephone Company (BPS) filed an application with the Commission requesting approval of its plan to implement intraLATA toll dialing parity (ILDLP). This filing was made pursuant to a March 23 order of the Federal Communications Commission (FCC) that required all local exchange companies (LECs) to make such filings. The FCC order, as the Commission intends to comply with it¹, requires the Commission to approve each LEC's ILDP by June 22. It also requires that, assuming the Commission approves the plan by June 22, each LEC implement its plan by July 22. The Commission consolidated BPS's ILDP plan filing, and all the LECs' ILDP filings, with Case No. TO-99-254 et al., and held a hearing May 17-26.

*The Commission, in an order issued on July 15, 1999, denied a rehearing in this case. See pages 176 and 245 for orders regarding Case No. TO-99-254, et al.

The Commission issued other orders similar to this involving various telephone companies and this issue. Please see the Unreported section of this book.

¹ The order provides that, if a state commission has not approved a LEC's plan by June 22, that LEC must file the plan with the FCC's Common Carrier Bureau for approval. Since the Commission is herein approving Applicant's plan, this provision of the FCC's order is moot.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

BPS's ILDP Plan

BPS's plan provides that its customers will receive ILDP on July 22, 1999. BPS intends to allow its customers to select a carrier for interLATA toll calls and to select the same or a different carrier for intraLATA toll calls.

Assignment of Customers and Termination of the PTC Plan

BPS proposes that Southwestern Bell Telephone continue to provide intraLATA toll service for some period of time after the implementation of ILDP on July 22 to all customers that have not chosen an intraLATA toll carrier. BPS estimates that this period would be approximately ninety days and that, during this period, a second notice and a ballot would be sent to customers who have not chosen an intraLATA toll carrier. BPS believes that this approach will reduce customer confusion and give customers a greater opportunity to choose a carrier before one is chosen for them (or they are treated as having no Primary Interexchange Carrier for intraLATA toll, or "no PICed"). BPS has not made a final decision on how customers will be treated who still have not affirmatively picked an intraLATA toll carrier by the end of this period.

Because the period between the time customers get notice and the beginning of ILDP is so short, the Commission will order the PTC plan to continue in modified form for a period of 90 days. The Commission believes that some customers might not pick an intraLATA toll carrier by July 22. Particularly in light of AT&T's limited participation, this could result in a significant number of customers having to use 101XXXX dialing. By extending the PTC plan for a short period, customers will have a much greater opportunity to choose the carrier they want to carry intraLATA toll calls.

The Commission agrees that an additional notice has the potential to alleviate some customer confusion. However, BPS's approach will also increase implementation costs (which ultimately will be borne by customers) and hinder the development of competition. The Commission finds that the added cost of an additional notice and a ballot outweighs the potential reduction in customer confusion.

The Commission will order BPS to modify its plan to provide a single notice to customers. The Commission will also order BPS to assign each customer that has not chosen an intraLATA toll carrier by October 20 to the customer's interLATA toll carrier if that carrier has notified BPS that it is willing to be on a customer notification list. If the customer's interLATA toll carrier has not notified BPS, then BPS should

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consider the customer a “no PIC.” As discussed below, the notice that BPS is to mail directly to customers will clearly explain options and consequences, and BPS will waive PIC change charges for a 180-day period. As a result, even though some customers might be inconvenienced to find that they have no PIC when they try to dial an intraLATA toll call, they will be able to choose a carrier at no cost with a call to the BPS business office, or to one of the available long distance carriers.

During this short transition period, the PTCs will not be required to offer new services to customers in BPS exchanges, to provide intraLATA toll services to new customers in SC exchanges, or to take Billing and Collection services (B&C) from BPS. It would not be in the public interest for existing customers to get accustomed to new services that will no longer be available (at least from a PTC) a short time later. By the same token, it would not be in the public interest to allow new BPS customers to take intraLATA toll service from a PTC only to find that service from that carrier is no longer available a short time later. Finally, in the transition to competition, it would not be conducive to the development of competition to require a PTC to purchase B&C from BPS when none of the new entrants has a similar requirement. The PTCs will be required during the transition to carry all intraLATA toll traffic from BPS customers who have not chosen a carrier.

The Commission will order the PTC plan to continue in this modified form in BPS’s territory until October 20, 1999.

Cost Recovery

BPS proposes to recover the incremental costs of implementing ILDP over a three-year period as a surcharge on the Carrier Common Line (CCL) element for all originating intrastate access minutes.

The following incremental costs were included by BPS for recovery: preparing and gaining approval of ILDP; customer notification; business office training; increases in business office work; network software; billing system modifications; network translations; and a 90-day waiver of PIC change charge. The Commission finds that all of these types of costs are appropriate for recovery. Because BPS’s estimates of these costs will be revised once actual costs are known, the Commission will not enter a finding as to the accuracy of these estimates.

Spreading the costs over all intrastate originating minutes is a reasonable means of recovering the cost of implementation. To limit the recovery to only intraLATA originating minutes would raise those rates too much at a time when competition in this market is just starting. AT&T’s proposal to spread the costs over a period longer than three years would simply drag the process out. The Commission finds that it would not be in the public interest for LECs to still be recovering the costs of ILDP implementation as much as eight years in the future.

This recovery method is the same as the one the Commission approved for Sprint and GTE in their implementation plans. Although the Commission noted that there was no precedential value to that decision, and that each plan recovery method would

be evaluated on its own merits, the reasoning that led the Commission to approve this method for GTE and Sprint is equally applicable here.

The Commission will accept BPS's cost estimates used to calculate the charges in its tariff, and will order BPS to provide the Staff of the Commission with the actual costs when available. It will also order BPS to provide the Staff with an annual accounting of the progress of its cost recovery. The Staff and BPS should monitor the recovery to ensure the temporary additive is ended as soon as the actual cost of implementation is recovered.

PIC Change Charge Waiver

BPS proposed a 90-day waiver of primary interexchange carrier (PIC) change charges. The Commission finds that this period is too short for the waiver of PIC charges. This period would not allow customers to fully understand the changes with which they are faced, nor to fully explore the options they have. Furthermore, a 90-day period would end just at the time some customers are assigned to their interLATA long distance company or no-PICed. The Commission will order BPS to implement a PIC change charge waiver period of 180 days.

Customer Notification

BPS's plan states that it will notify its customers of the implementation of ILDP by a separate mailing to each of its customers. This is the appropriate means of notifying customers, and the Commission will approve it.

The Commission finds that the content of the notice should be as clear and concise as possible, while at the same informing customers of the choices they have, and the consequences of those choices. If a notice did not inform customers as much as possible on the questions that are likely to concern them, it would not serve the public interest². The Commission will direct BPS to provide customers upon request a list of all carriers authorized and obligated to provide intraLATA toll service in BPS's territory. The Commission will direct BPS to provide customers the following notice:

IMPORTANT PUBLIC INTEREST NOTICE

Currently, your intraLATA 1+ and 0+ calls (long distance calls to nearby communities to which long distance charges apply) are carried by Southwestern Bell Telephone Company. This service is called intraLATA toll service. Effective July 22, 1999, you will be able to choose the company you would like to carry these calls.

² Because AT&T is the selected interLATA carrier for such a large number of customers in SC exchanges such as BPS's, AT&T is specifically mentioned. The Commission finds that requiring BPS to state AT&T's position in the customer notice is necessary to minimize customer confusion.

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Attached is a list of the companies that have told BPS Telephone Company that they are willing to carry these calls. You should contact your local BPS Telephone Company business office or the company you choose to provide this service. If you do not call BPS Telephone Company or a long distance company of your choice and choose a company to provide this service, **you will automatically be assigned to your current long distance (interLATA) company if it appears on the attached list.**

Even if your current long distance (interLATA) company is not on the attached list, it may be willing or required by law to provide this service*. You can contact your local BPS Telephone Company business office for a list of all companies authorized to provide intraLATA toll service in Missouri. If your current long distance (interLATA) company is not on the attached list, and you want it to carry these calls in addition to the long distance calls it now carries, you should contact it.

If your current long distance (interLATA) company is not on the attached list and you do not choose another company, **after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls** until you do choose another company. You will still be able to make these calls by dialing a "101XXXX" access number; a list of these "101XXXX" access numbers available to you is attached. You can also get a list of these numbers from your local BPS Telephone Company business office.

Please note that the rates and services of each of these companies may be different from each other, and from the rates and services you currently receive from Southwestern Bell Telephone Company. Particularly if you make a lot of calls, or make long calls (such as to connect to an internet service provider (ISP) through a dial-up connection), you should check with your local BPS Telephone Company business office and the long distance company you choose to find out whether long distances charges will apply to these calls.

For 180 days after July 22, you will be able to choose a company to provide this service and you will not be charged for making the change. **If your current long distance (interLATA) company is not on the attached list and you do not choose another company, after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls until you do choose another company.** If you want to change after your initial choice, or make a change after January 20, 2000, you will incur a charge of \$5.00.

*Even though AT&T is not on the attached list, it will carry these calls if you request it.

Carrier Notification

BPS stated that it intends to notify interexchange carriers (IXCs) that currently provide service in its exchanges within a week of the filing of its plan.

AT&T was the only party to Case No. TO-99-254 et al. that took the position that a second notice to carriers was necessary. AT&T believed that a second notice after the Commission issues its order on the ILDP plan would allow IXC's to decide whether to participate based on the specifics of the Commission's order. However, as a party, AT&T will be well aware of the specifics of the Commission's order. Furthermore, AT&T testified at the hearing that the specifics of any Commission order approving an ILDP plan would not change its decision on how it will participate. The Commission finds that one notice to IXC's that currently provide service in BPS's exchanges is sufficient.

Revenue Neutrality

BPS proposes a revenue neutrality adjustment that will be implemented by raising intraLATA Carrier Common Line (CCL) rates. BPS proposes to raise these rates as necessary to maintain revenue neutrality, up to the level of interLATA CCL rates. If this increase is not sufficient, BPS proposes to raise both interLATA and intraLATA rates and keep them in parity. The rates are also calculated to eliminate the CCL cap, or discounted CCL rate.

The Commission will allow BPS to achieve revenue neutrality at the time it implements its ILDP plan. It will do so, however, under a mechanism that allows BPS to achieve its desired revenue neutrality while at the same time protecting BPS's customers from the possibility that they will be overcharged as a result of the revenue neutrality filing.

Because an interim filing is necessarily ancillary to a permanent increase in rates (see, e.g., *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, (Mo. App. 1976)) the Commission will approve BPS's revenue neutrality filing if it commits to filing a general rate case in which all relevant factors are to be examined no sooner than eight months and no later than ten months after October 20, 1999. Furthermore, the tariffs implementing revenue neutrality should clearly reflect BPS's agreement that the increase they implement is to be interim and subject to refund. The interim period over which they are effective shall be from October 20 until the Commission resolves the rate case. The parties shall address in the rate case, the issues of the amount of any decrease in revenues BPS suffered as a result of the elimination of the PTC plan, and whether the interim tariffs over-recovered the decrease in revenues. BPS shall bear the burden of proof on these issues. BPS shall refund any amount determined to be over-recovery to each of the entities that paid the interim increase, according to the percentage that entity paid. Interest shall be applied to the refund at the rate of nine percent per annum.

BPS has proposed that its interim increase be subject to refund based upon an examination of actual revenue changes for a period of time after the termination of the PTC plan, and the Commission has accepted that proposal. Therefore, the questions of the accuracy of BPS's estimates of revenue losses, and even of the categories of revenue losses attributable to the elimination of the PTC plan³, need

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not be resolved at this time; they will be addressed in BPS's rate case. In addition, the Commission finds that the rate elements that BPS proposes to adjust are appropriate and sufficiently competitively neutral.

So that the Commission and its Staff can examine the revenue neutrality calculations, the Commission will order BPS to file all supporting documentation with its revenue neutrality tariffs.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

BPS is a public utility and a telephone company subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission require LECs such as BPS to implement intraLATA equal access. BPS has submitted an intraLATA dialing parity implementation plan to this Commission for approval. Based upon its findings of fact, the Commission has determined that the plan should be approved as modified.

IT IS THEREFORE ORDERED:

1. That the intraLATA dialing parity plan filed by BPS Telephone Company on April 22, 1999 is approved with the modifications discussed herein.
2. That BPS Telephone Company shall file tariffs implementing intraLATA dialing parity consistent with this Report and Order.
3. That, as soon as they are available, BPS Telephone Company shall submit to the Staff of the Commission data showing the actual cost of implementing intraLATA dialing parity. If necessary, BPS Telephone Company shall file revised tariffs to reflect the difference between the estimated costs and the actual costs.
4. That, on or about October 1 of each year, BPS Telephone Company shall submit to the Staff of the Commission data showing the status of cost recovery.
5. That BPS Telephone Company and the Staff of the Commission shall monitor the progress of cost recovery and BPS Telephone Company shall file tariffs with the Commission to eliminate the cost recovery surcharge so that only the actual costs are recovered.
6. That, if BPS Telephone Company files tariffs to provide revenue neutrality, it shall file a general rate case no sooner than eight months and no later than ten months after October 20, 1999.

³ The Commission notes, without deciding, that certain types of revenue losses that BPS includes in its revenue neutral calculation may not be attributable to the elimination of the PTC plan. While such revenue losses may be appropriate to consider in setting "going forward" rates in the rate case, if they are not attributable to the elimination of the PTC plan, they would not have been appropriate in the revenue neutral calculation and BPS may be required to refund them.

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7. That, if BPS Telephone Company files tariffs to provide revenue neutrality, it shall file supporting documentation with the tariffs.

8. That, within ten days of the effective date of this order, BPS Telephone Company shall notify its customers, as discussed herein, of the availability of intraLATA toll dialing parity.

9. That the Primary Toll Carrier plan is modified and continued only to the extent necessary to accommodate the modifications discussed herein.

10. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

ORDER REGARDING PETITION FOR MODIFICATION

Decided September 21, 1999

On August 31, 1999, BPS Telephone Company (BPS) filed a petition for modification of its IntraLATA Dialing Parity (ILDP) plan. BPS stated that it wanted to modify its ILDP plan because the plan it proposed and the Commission approved would assign customers who did not choose a primary interexchange carrier (PIC) for intraLATA toll service to their interLATA carrier, and because AT&T is the interLATA PIC for many of its customers. BPS stated that, under the plan it proposed, it is concerned that a number of customers might be defaulted to a 101XXXX dialing pattern. BPS requests that the Commission allow it to modify its plan so that customers who have not chosen a primary interexchange carrier (PIC) for intraLATA toll service by October 20, 1999, will be assigned to its long distance affiliate (FDF Communications Co. d/b/a BPS Long Distance) rather than to their interLATA carrier. BPS also requested that the Commission authorize it to send a notification letter (a copy of which is attached to its petition) explaining the modification to its customers.

A number of secondary carriers (SCs) proposed ILDP plans that assigned customers who did not choose a PIC to a long distance affiliate of the SC, and the Commission approved these plans. (See, e.g., TO-99-514, In the Matter of the Petition of Mark Twain Rural Telephone Company for Approval of an IntraLATA Dialing Parity Plan.) The Commission will allow BPS to modify its ILDP plan as requested.

However, the Commission is concerned that BPS's proposed notification letter does not stress the fact that it is a change from the earlier notice. The Commission will direct BPS to add the following paragraph in large bold type at the beginning of its proposed notice:

THIS NOTICE WILL ALERT YOU OF CHANGES THAT HAVE OCCURRED SINCE THE NOTICE YOU RECEIVED IN LATE JUNE OR EARLY JULY. Contrary to what that notice said, if you do not affirmatively choose (by contacting BPS Telephone Company or the long distance company you choose) an intraLATA toll service provider by October 20, 1999, you will be assigned to BPS Long Distance, an affiliate of BPS Telephone Company. The earlier notice stated that you would be assigned to your interLATA long distance carrier if you did not affirmatively choose an intraLATA carrier. That is no longer correct.

The Commission will also direct BPS to add the following paragraph at the end of its proposed notice:

You will still be able to make toll calls by “dialing around” using a “101XXXX” access number. A list of these “101XXXX” access numbers is available from your local BPS Telephone Company business office.

IT IS THEREFORE ORDERED:

1. That the petition to modify its IntraLATA Dialing Parity plan filed by BPS Telephone Company on August 31, 1999 is granted.
2. That BPS Telephone Company shall provide notice to its customers as discussed herein.
3. That this order shall become effective on October 1, 1999.

Crumpton, Murray, Schemenauer, and Drainer, CC., concur Lumpe, Ch., absent

Mills, Deputy Chief Regulatory Law Judge

In the Matter of Chariton Valley Telephone Corporation’s Complaint Against Southwestern Bell Telephone Company for Terminating Cellular Compensation.*

In the Matter of Mid-Missouri Telephone Company’s Complaint Against Southwestern Bell Telephone Company for Terminating Cellular Compensation.

*Case Nos. TC-98-251 & TC-98-340
Decided June 10, 1999*

Telecommunications §46.3. Where SWBT terminated wireless-originated traffic on Complainants’ network, SWBT was Complainants’ customer and was required to compensate Complainants for terminating the traffic.

*The Commission, in an order issued on July 1, 1999, denied a request for rehearing.

APPEARANCES

Craig S. Johnson, Andereck, Evans, Milne, Peace and Baumhoer, L.L.C., Post Office Box 1438, 301 East McCarty Street, Jefferson City, Missouri 65102-1438, for Chariton Valley Telephone Corporation and Mid-Missouri Telephone Company.

Leo J. Bub, Attorney, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company of Missouri.

Penny G. Baker, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

REPORT AND ORDER

Procedural History

Chariton Valley Telephone Corporation (Chariton Valley) filed its complaint against Southwestern Bell Telephone Company (SWBT) on December 19, 1997 (Case No. TC-98-251). Mid-Missouri Telephone Company (Mid-Missouri) filed its complaint against SWBT on February 10, 1998 (Case No. TC-98-340). Each complaint alleges that SWBT failed to pay terminating access charges to Chariton Valley and Mid-Missouri (collectively, the Complainants) for cellular-originated toll calls terminated by SWBT in Complainants' exchanges pursuant to SWBT's radio common carrier tariff. Complainants allege that SWBT engaged in this conduct from January 1, 1991, to February 4, 1998. The Complainants contend that SWBT owes them access charges for each such call pursuant to the Oregon Farmers Mutual Access Service Tariff, P.S.C. Mo. No. 6, adopted by each of the Complainants. Complainants seek a declaration that SWBT's conduct was unlawful under Sections 386.390, RSMo 1994, 392.220, RSMo Supp. 1998, and 392.240, RSMo 1994;¹ and a further declaration that they were injured by SWBT to a specific value of money, so that they may recover those damages by civil suit. Section 392.350.

The Commission issued a Notice of Complaint in each case and SWBT timely answered, denying the allegations of the Complainants. On July 22, 1998, the Commission consolidated these two cases, as well as five other similar cases, for hearing purposes. On November 30, 1998, the Commission dismissed those other cases at the request of the complaining parties. The Commission now consolidates Case No. TC-98-251 and Case No. TC-98-340 for purposes of decision.

¹ All further statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

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A prehearing conference was held on August 19, 1998. The parties subsequently filed testimony. The Commission held an evidentiary hearing on February 25 and 26, 1999. All parties were represented at the evidentiary hearing. Just before the hearing, on February 23, 1999, SWBT moved to strike portions of the Surrebuttal Testimony filed by Complainants, which motion was granted by the Commission by order issued on March 16, 1999.

The Commission set a posthearing briefing schedule by order issued on February 26, 1999. Complainants, SWBT and the Staff of the Missouri Public Service Commission (Staff) all filed their initial briefs on April 8, 1999. Complainants filed their reply brief on April 19, 1999; SWBT filed its reply brief on April 21, 1999; and the Staff notified the Commission, on the latter date, that it did not intend to file a reply brief.

Discussion

Chariton Valley, Mid-Missouri and SWBT are public utilities engaged in providing basic local exchange telecommunications services to the public in the state of Missouri. The Complainants contend that SWBT owes substantial amounts of unpaid terminating access charges to them for long distance telephone calls handed off to SWBT for termination to Complainants' subscribers by various wireless telecommunications companies between January, 1991, and February, 1998.² SWBT admits that it terminated the calls as charged by the Complainants, but denies that it owes any amounts to Complainants with respect to those calls.

The general principle that governs this case, as pointed out by Staff in its brief, was established in a previous case: In the Matter of United Telephone Company of Missouri's Complaint against Southwestern Bell Telephone Company for Failure to Pay United its Terminating Access for Cellular-originated Calls which are Terminated in United's Territory, Case No. TC-96-112 (April 11, 1997). In that case, on identical facts, the Commission determined that SWBT was United's customer with respect to the cellular-originated traffic in question and that SWBT, consequently, was required to pay United its tariffed terminating access charges. To the extent that SWBT seeks to relitigate that principle here, the Commission rejects SWBT's arguments. As the Commission determined in the United case, SWBT was Complainants' customer with respect to the traffic at issue in this case from January 1, 1991, to February 4, 1998. Therefore, SWBT must compensate Complainants for that traffic according to Complainants' tariff.

The next issue concerns the interpretation of Complainants' tariff. Each of the Complainants has adopted the Oregon Farmers' Mutual Telephone Company Access Service Tariff.³ SWBT contends that, while United's access tariff called for payment based on the measurement of actual terminating traffic volumes, the

²Chariton Valley claims that SWBT owes it \$79,322.68, while Mid-Missouri claims that SWBT owes it \$47,602.03.

³Oregon Farmers' Mutual Telephone Company, PSC Mo. No. 6, Access Service Tariff, 1st Revised Sheet 97, 2nd Revised Sheet 103.1 and 1st Revised Sheet 103.1.1.

Oregon Farmers' tariff imputes terminating volume based on originating volume by means of a ratio, referred to as a "T/O ratio." SWBT argues that the T/O ratios must be applied to the traffic in question and that Complainants have already been paid for this traffic in that SWBT has paid the bills presented to it by the Complainants for the period in question generated using T/O ratios. Complainants, as well as Staff, argue that the Oregon Farmers' tariff shows a preference for actual traffic measurements where those are available.

The Commission concludes that the Oregon Farmers' tariff does contain a preference for using actual traffic volumes in calculating terminating access charges. The tariff provides:

For terminating calls over FGC the chargeable access minutes are either measured or derived. For terminating calls over FGC where measurement capability does not exist, terminating FGC usage is derived from originating usage, excluding usage from calls to closed end services or Directory Assistance Services.

Oregon Farmers' Mutual Telephone Company, PSC Mo. No. 6, Access Service Tariff, 2nd Revised Sheet 103.1 (issued April 1, 1993). In the present case, the actual traffic volume is available and is not in dispute; it was measured by SWBT and the measurement was provided by SWBT to Complainants. Therefore, because the tariff language in question was issued on April 1, 1993, the Commission concludes that SWBT must compensate the Complainants based upon the actual measured terminating traffic volumes from April 1, 1993, to February 4, 1998.⁴

SWBT suggests that the traffic measurements in question may not be used to determine access charges because the traffic was not measured by the Complainants. However, the parties agree that only SWBT was actually able to measure this traffic and that SWBT provided those measurements to Complainants. In a sense, for the limited purpose of measuring this traffic, SWBT acted as Complainants' agent. The Commission finds that these measurements should be used in determining the compensation due to Complainants from SWBT.

As it did in the United case, SWBT raises the equitable defenses of laches and estoppel. Neither defense is available to SWBT here. "Laches" is an unreasonable delay, where diligence was possible, to do what in law should have been done. *Hagely v. Board of Educ. of Webster Groves School Dist.*, 841 S.W.2d 663, 669-70 (Mo. banc 1992). However, mere delay does not constitute laches; the delay involved must cause prejudice to the defendant. *Id.* SWBT has failed to specify how it has been prejudiced by an unreasonable delay by Complainants. The parties have shown that extensive negotiations have been carried on over an extended

⁴Complainants have not shown that the Oregon Farmers' tariff contained the language quoted from 2nd Revised Sheet 103.1 prior to April 1, 1993, which indicated a preference for actual measured terminating traffic volume where available.

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period in an effort to settle this matter short of litigation. It does not appear that any delay has been unreasonable.

Likewise, the elements of equitable estoppel are: “(1) an admission, statement or act inconsistent with the claim afterwards asserted and sued on; (2) action by the other party on the faith of such admission, statement or act; and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act.” *Holdener v. Fieser*, 971 S.W.2d 946, 950 (Mo. App., E.D. 1998). SWBT has failed to identify any inconsistent representation by Complainants.

Finally, the Commission must point out to Complainants that it is without jurisdiction to award monetary damages to them against SWBT. *Wilshire Constr. Co. v. Union Electric Co.*, 463 S.W.2d 903, 905 (Mo. banc 1971).

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Chariton Valley, Mid-Missouri and SWBT are duly licensed and certificated telecommunications carriers. Each of the three provides telecommunications services as an incumbent local exchange carrier in the state of Missouri.

Between January 1, 1991, and October 22, 1994, inclusive, SWBT terminated cellular-originated interexchange telecommunications traffic over Feature Group C (FGC) to Chariton Valley subscribers measured at 96,308 minutes of use (MOU). Between October 23, 1994, and February 4, 1998, inclusive, SWBT terminated cellular-originated interexchange telecommunications traffic over FGC to Chariton Valley subscribers measured at 1,051,885 MOU.

Between January 1, 1991, and October 22, 1994, inclusive, SWBT terminated cellular-originated interexchange telecommunications traffic over FGC to Mid-Missouri subscribers measured at 50,790 MOU. Between October 23, 1994, and February 4, 1998, inclusive, SWBT terminated cellular-originated interexchange telecommunications traffic over FGC to Mid-Missouri subscribers measured at 484,840 minutes of use.

Neither Chariton Valley nor Mid-Missouri has received full compensation from SWBT with respect to the cellular-originated interexchange telecommunications traffic terminated by SWBT to Chariton Valley and Mid-Missouri subscribers between April 1, 1993, and February 4, 1998, based upon actual measurements. Chariton Valley and Mid-Missouri have demanded payment from SWBT for the traffic herein at issue and SWBT has refused to pay.

Neither Chariton Valley nor Mid-Missouri is capable of measuring the traffic at issue herein; however, SWBT is capable of measuring that traffic and has done so.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Chariton Valley, Mid-Missouri and SWBT are public utilities within the intendments of Chapter 386, RSMo, and are thus subject to the jurisdiction of the Missouri Public Service Commission. Pursuant to Section 386.390.1, RSMo 1994, the Commission has jurisdiction to hear and determine complaints concerning “any act or thing done or omitted to be done by any . . . public utility[.]” Public utilities, such as Complainants herein, are expressly authorized to file such complaints. Section 386.400, RSMo 1994. The Commission concludes that it has jurisdiction to hear and determine this matter.

The Commission concludes that the cellular-originated interexchange telecommunications traffic terminated by SWBT to Chariton Valley and Mid-Missouri subscribers between April 1, 1993, and February 4, 1998, is subject to the terminating access rates prescribed by the approved tariff adopted by each of those companies, the Oregon Farmers’ Mutual Telephone Company Access Service Tariff, Mo. PSC No. 6. Where, as here, the actual volume of terminating traffic in question is known, that tariff computes access charges by multiplying the traffic volume, in minutes of use (MOU), by a per minute rate.

It is well-established that rates filed by a public utility and approved by the Commission have the force and effect of law as though directly prescribed by the Missouri legislature. *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 114 and n. 9, 57 S.Ct. 345, 347 and n. 9, 81 L.Ed. 540, ___, *rehearing den.*, 300 U.S. 687, 57 S.Ct. 504, 81 L.Ed. 888 (1937); *and see* *Central Controls Co., Inc. v. AT&T Information Systems, Inc.*, 746 S.W.2d 150, 153 (Mo. App., E.D. 1988). Therefore, the Commission necessarily further concludes that SWBT acted in violation of Commission order and state law by terminating traffic to Chariton Valley and Mid-Missouri without compensating those companies pursuant to their approved access tariffs.

Finally, the Commission concludes that it is without authority to order an award of money to Complainants. *Wilshire Constr. Co.*, *supra*.

IT IS THEREFORE ORDERED:

1. That the cellular-originated interexchange telecommunications traffic terminated by Southwestern Bell Telephone Company to Chariton Valley Telephone Corporation and Mid-Missouri Telephone Company subscribers between April 1, 1993, and February 4, 1998, is subject to the terminating access rates prescribed by the approved tariff adopted by each of those companies, the Oregon Farmers’ Mutual Telephone Company Access Service Tariff, Mo. PSC No. 6.

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2. That where the volume of terminating traffic is known, access charges are calculated under the Oregon Farmers' Mutual Telephone Company Access Service Tariff, Mo. PSC No. 6, by multiplying the traffic volume, in minutes of use (MOU), by a per minute rate.

3. That this Report and Order shall become effective on June 22, 1999.

4. That this case may be closed on June 23, 1999.

Lumpe, Ch., Drainer and Schemenauer, CC., concur.

Crumpton, C., concurs, with separate concurring opinion to follow.

Murray, C., dissents.

Concurring Opinion of Commissioner Harold Crumpton

I concur in the opinion of the majority with respect to its limited findings in this case. The parties operated under Oregon Farmers Mutual Telephone Company, PSC Mo. No. 6, Access Service Tariff. That tariff required that compensation for terminating access would be derived based on the originating access minutes determined at the terminating office. In essence, the parties measured the terminating minutes at the tandem switch and the originating toll minutes at the end offices (in this case Chariton Valley and the Mid-Missouri offices); for each end office the parties calculated a T:O ratio.

These ratios were multiplied by the originating minutes (provided by the managers of Mid-Missouri and Chariton Valley) for each end office to determine the terminating minutes sent by the owners of the tandem switch. These terminating minutes were billed to the tandem owner at the tariff rates for the end offices, i.e., at Mid-Missouri and Chariton Valley. These facts were not in dispute.

The complainants sent the bills and they were paid. Now comes the advent of wireless traffic and the internet traffic. I will talk about wireless traffic first and internet traffic second.

The complainants contend that the T:O ratios were developed prior to the emergence of the wireless traffic that Southwestern Bell (SWBT) has been terminating to complainants' end offices. The evidence in the case supports this fact.

There is nothing in the record that demonstrates that an increase in the terminated wireless traffic was not accompanied by an offsetting increase in traffic originating in complainants' offices.

This fact alone is disturbing to me because the complainants have the ability to perform traffic studies which could prove that the T:O ratios changed.

I am also disturbed by the fact that SWBT did not provide a traffic study to support its position. Either study in my opinion would have been despositive of this case.

Finally, there was no mention of the effects of the new internet traffic on the toll minutes originated in the complainants' end offices. In some offices this could be

very high.

The complainants want to operate with a mishmash of accounting systems. It is bad public policy to permit such a situation. I call upon the majority to set for hearing a case on traffic accounting over the public switched network.

The majority is left with the evidence in the record and I concur.

Dissenting Opinion of Commissioner Connie Murray

I respectfully dissent from the opinion of the majority. The record supports SWBT's contention that Complainants have been paid for terminating traffic imputed under the T/O ratio specified in Complainants' tariffs. Nowhere in the record have Complainants shown that the imputed traffic volume does not include the traffic herein at issue. The record is devoid of evidence that additional payments are due under the applicable tariffs.

Pursuant to the Oregon Farmers' Mutual Telephone Company Access Services Tariff, Complainants billed SWBT between January 1, 1991, and February 4, 1998, inclusive, for imputed minutes of terminating traffic, calculated by application of T/O ratios. There is no dispute that SWBT paid those bills in full. Complainants' claims to additional terminating access compensation for the period in question are without merit.

In the Matter of the Petition of Alltel Missouri, Inc. for Approval of an IntraLATA Presubscription Plan*

Case No. TO-97-497
Decided June 10, 1999

Telecommunications § 33. The Commission determined that a local exchange company's plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.

BACKGROUND

On April 22, 1999, Alltel Missouri, Inc. (Alltel) filed an application with the Commission requesting approval of its plan to implement intraLATA toll dialing parity (ILDLP). This filing was made pursuant to a March 23 order of the Federal Communications Commission (FCC) that required all local exchange companies (LECs) to make such filings. The FCC order, as the Commission intends to comply

*The Commission, in an order issued on July 15, 1999, denied a rehearing in this case. See pages 176 and 245 for orders regarding Case No. TO-99-254, et al. The Commission issued orders similar to this involving various telephone companies and this issue. Please see Unreported section of this book.

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with it¹, requires the Commission to approve each LEC's ILDP by June 22. It also requires that, assuming the Commission approves the plan by June 22, each LEC implement its plan by July 22. The Commission consolidated Alltel's ILDP plan filing, and all the LECs' ILDP filings, with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

Alltel's ILDP Plan

Alltel's plan provides that its customers will receive ILDP on July 22, assuming the Commission's order approving its plan is issued or effective on June 21. Alltel intends to allow its customers to select a carrier for interLATA toll calls and to select the same or a different carrier for intraLATA toll calls.

Assignment of Customers and Termination of the PTC Plan

Alltel proposes that the Primary Toll Carriers (PTCs) continue to provide intraLATA toll service for 60 days after the implementation of ILDP on July 22 to all customers that have not chosen an intraLATA toll carrier. Alltel states that an interim period between the implementation of ILDP and the termination of the PTC plan will allow it to notify its customers by bill message in the regular billing cycles. Because, as discussed below, the Commission will order Alltel to notify its customers with a separate mailing rather than a bill message, this is not a valid reason to extend the PTC plan. However, because the period between the time customers get notice and the beginning of ILDP is so short, the Commission will order the PTC plan to continue in modified form for a period of 90 days. The Commission believes that some customers might not pick an intraLATA toll carrier by July 22. Particularly in light of AT&T's limited participation, this could result in a significant number of customers having to use 101XXXX dialing. By extending the PTC plan for a short period, customers will have a much greater opportunity to choose the carrier they want to carry intraLATA toll calls.

¹ The order provides that, if a state commission has not approved a LEC's plan by June 22, that LEC must file the plan with the FCC's Common Carrier Bureau for approval. Since the Commission is herein approving Applicant's plan, this provision of the FCC's order is moot.

During this short transition period, the PTCs will not be required to offer new services to customers in Alltel exchanges, to provide intraLATA toll services to new customers in SC exchanges, or to take Billing and Collection services (B&C) from Alltel. It would not be in the public interest for existing customers to get accustomed to new services that will no longer be available (at least from a PTC) a short time later. By the same token, it would not be in the public interest to allow new Alltel customers to take intraLATA toll service from a PTC only to find that service from that carrier is no longer available a short time later. Finally, in the transition to competition, it would not be conducive to the development of competition to require a PTC to purchase B&C from Alltel when none of the new entrants has a similar requirement. The PTCs will be required during the transition to carry all intraLATA toll traffic from Alltel customers who have not chosen a carrier.

The Commission will order the PTC plan to continue in this modified form in Alltel's territory until October 20, 1999.

Cost Recovery

Alltel proposes to recover the incremental costs of implementing ILDP over a one-year period over all originating and terminating intrastate minutes. Alltel stated that it would not object to recovering these costs over total originating intrastate access minutes.

The Commission does not believe that such a short recovery period is in the public interest. The effect of recovering implementation costs over just one year, as opposed to three years as most LECs have proposed, would be to triple the rate of the cost recovery additive. Such an increase at the same time as customers are adjusting to new carriers and new services, and IXC's are trying to enter new markets, would be unreasonable. The Commission will order Alltel to calculate its recovery for a three-year period.

The following incremental costs were included by Alltel for recovery: implementation activity; customer notification; business office and other personnel training; central office software upgrades; network hardware upgrades; billing system modifications; and software translations. The Commission finds that all of these types of costs are appropriate for recovery. Because Alltel's estimates of these costs will be revised once actual costs are known, the Commission will not enter a finding as to the accuracy of these estimates.

Spreading the costs over all intrastate originating minutes is a reasonable means of recovering the cost of implementation. To limit the recovery to only intraLATA originating minutes would raise those rates too much at a time when competition in this market is just starting. Other alternatives, such as spreading the costs over terminating minutes as well as originating minutes, or spreading the recovery over a longer period, are flawed. Because the beneficiaries of ILDP are the end-users who originate calls and interexchange carriers who carry them, there is little reason to assess the costs of this new opportunity to carriers who simply terminate calls. In

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addition, the evidence shows that Alltel's terminating rates are already high and Alltel has stated that it does not object to recovering its costs only on originating minutes. AT&T's proposal to spread the costs over a period longer than three years would simply drag the process out. The Commission finds that it would not be in the public interest for LECs to still be recovering the costs of ILDP implementation as much as eight years in the future.

This recovery method is the same as the one the Commission approved for Sprint and GTE in their implementation plans. Although the Commission noted that there was no precedential value to that decision, and that each plan recovery method would be evaluated on its own merits, the reasoning that led the Commission to approve this method for GTE and Sprint is equally applicable here.

The Commission will accept Alltel's cost estimates used to calculate the charges in its tariff, and will order Alltel to provide the Staff of the Commission with the actual costs when available. It will also order Alltel to provide the Staff with an annual accounting of the progress of its cost recovery. The Staff and Alltel should monitor the recovery to ensure the temporary additive is ended as soon as the actual cost of implementation is recovered.

PIC Change Charge Waiver

Alltel proposed a 60-day waiver of primary interexchange carrier (PIC) change charges. The Commission finds that this period is too short for the waiver of PIC charges. This period would not allow customers to fully understand the changes with which they are faced, nor to fully explore the options they have. A period that is too long (*i.e.*, more than 180 days) would force all intrastate toll carriers through the cost recovery mechanism, and indirectly their customers, to pay the cost of a PIC change for a customer who simply has not acted for more than six months after being notified of the beginning of ILDP. The Commission will order Alltel to implement a PIC change charge waiver period of 180 days.

Customer Notification

Alltel intends to notify its customers of the implementation of ILDP by a "bill message" in the customers' bills as soon as possible following Commission approval of the plan. Alltel does not intend to ballot its customers.

The public will be best served if information regarding the implementation of ILDP is conveyed in such a way as to capture a reader's attention. A bill message or a bill insert is all too easily missed or ignored. Despite the increased cost of a separate mailing over a bill message or a bill insert, the Commission finds that the increased readership that a separate mailing is likely to achieve will outweigh the cost. The Commission will order Alltel to notify its customers by a separate mailing.

The Commission finds that the content of the notice should be as clear and concise as possible, while at the same informing customers of the choices they have, and the consequences of those choices. If a notice did not inform customers as much as possible on the questions that are likely to concern them, it would not serve the

public interest². The Commission will direct Alltel to provide customers upon request a list of all carriers authorized and obligated to provide intraLATA toll service in Alltel's territory. The Commission will direct Alltel to provide customers the following notice:

IMPORTANT PUBLIC INTEREST NOTICE

Currently, your intraLATA 1+ and 0+ calls (long distance calls to nearby communities to which long distance charges apply) are carried by Southwestern Bell Telephone Company, Sprint Missouri, Inc., or GTE Midwest Incorporated. This service is called intraLATA toll service. Effective July 22, 1999, you will be able to choose the company you would like to carry these calls.

Attached is a list of the companies that have told Alltel Missouri, Inc. that they are willing to carry these calls. You should contact your local Alltel Missouri, Inc. business office or the company you choose to provide this service. If you do not call Alltel Missouri, Inc. or a long distance company of your choice and choose a company to provide this service, **you will automatically be assigned to your current long distance (interLATA) company if it is on the attached list.**

Even if your current long distance (interLATA) company is not on the attached list, it may be willing or required by law to provide this service*. You can contact your local Alltel Missouri, Inc. business office for a list of all companies authorized to provide intraLATA toll service in Missouri. If your current long distance (interLATA) company is not on the attached list, and you want it to carry these calls in addition to the long distance calls it now carries, you should contact it.

If your current long distance (interLATA) company is not on the attached list and you do not choose another company, **after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls** until you do choose another company. You will still be able to make these calls by dialing a "101XXXX" access number; a list of these "101XXXX" access numbers available to you is attached. You can also get a list of these numbers from your local Alltel Missouri, Inc. business office.

Please note that the rates and services of each of these companies may be different from each other, and from the rates and services you currently receive from Southwestern Bell Telephone Company, Sprint Missouri, Inc., or GTE Midwest Incorporated. Particularly if you make a lot of calls, or make long calls (such as to connect to an internet service provider (ISP) through a dial-up connection), you should check with your local Alltel Missouri, Inc. business office and the long distance company you choose to find out whether long distances charges will apply to these calls.

² Because AT&T is the selected interLATA carrier for such a large number of customers in SC exchanges such as Alltel's, AT&T is specifically mentioned. The Commission finds that requiring Alltel to state AT&T's position in the customer notice is necessary to minimize customer confusion.

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For 180 days after July 22, you will be able to choose a company to provide this service and you will not be charged for making the change. **If your current long distance (interLATA) company is not on the attached list and you do not choose another company, after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls until you do choose another company.** If you want to change after your initial choice, or make a change after January 20, 2000 you will incur a charge of \$5.00.

*Even though AT&T is not on the attached list, it will carry these calls if you request it.

Carrier Notification

Alltel states in its ILDP plan that it will notify carriers in advance of the proposed implementation date. It is unclear whether this notification has already taken place.

AT&T was the only party to Case No. TO-99-254 et al. that took the position that a second notice to carriers was necessary. AT&T believed that a second notice after the Commission issues its order on the ILDP plan would allow IXC's to decide whether to participate based on the specifics of the Commission's order. However, as a party, AT&T will be well aware of the specifics of the Commission's order. Furthermore, AT&T testified at the hearing that the specifics of any Commission order approving an ILDP plan would not change its decision on how it will participate. The Commission finds that one notice to IXC's that currently provide service in Alltel's exchanges is sufficient.

Revenue Neutrality

Alltel proposes a revenue neutrality adjustment that will be implemented by raising originating and terminating Carrier Common Line (CCL) rates. Alltel will revise these rates so that they will maintain the current originating/terminating rate differential. The Commission will allow Alltel to achieve revenue neutrality at the time it implements its ILDP plan. It will do so, however, under a mechanism that allows Alltel to achieve its desired revenue neutrality while at the same time protecting Alltel's customers from the possibility that they will be overcharged as a result of the revenue neutrality filing.

Because an interim filing is necessarily ancillary to a permanent increase in rates (see, e.g., *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, (Mo. App. 1976)), the Commission will approve Alltel's revenue neutrality filing if it commits to filing a general rate case in which all relevant factors are to be examined no sooner than eight months and no later than ten months after October 20, 1999. Furthermore, the tariffs implementing revenue neutrality should clearly reflect Alltel's agreement that the increase they implement is to be interim and subject to refund. The interim period over which they are effective shall be from October 20 until the Commission resolves the rate case. The parties shall address in the rate case, the issues of the amount of any decrease in revenues Alltel suffered as a result of the

elimination of the PTC plan, and whether the interim tariffs over-recovered the decrease in revenues. Alltel shall bear the burden of proof on these issues. Alltel shall refund any amount determined to be over-recovery to each of the entities that paid the interim increase, according to the percentage that entity paid. Interest shall be applied to the refund at the rate of nine percent per annum.

Alltel has proposed that its interim increase be subject to refund based upon an examination of actual revenue changes for a period of time after the elimination of the PTC plan, and the Commission has accepted that proposal. Therefore, the questions of the accuracy of Alltel's estimates of revenue losses, and even of the categories of revenue losses

attributable to the elimination of the PTC plan³, need not be resolved at this time; they will be addressed in Alltel's rate case. In addition, the Commission finds that the rate elements that Alltel proposes to adjust are appropriate and sufficiently competitively neutral.

So that the Commission and its Staff can examine the revenue neutrality calculations, the Commission will order Alltel to file all supporting documentation with its revenue neutrality tariffs.

IT IS THEREFORE ORDERED:

1. That the intraLATA dialing parity plan filed by Alltel Missouri, Inc. on April 22, 1999, is approved with the modifications discussed herein.

2. That Alltel Missouri, Inc. shall file tariffs implementing intraLATA dialing parity consistent with this Report and Order.

3. That, as soon as they are available, Alltel Missouri, Inc. shall submit to the Staff of the Commission data showing the actual cost of implementing intraLATA dialing parity. If necessary, Alltel Missouri, Inc. shall file revised tariffs to reflect the difference between the estimated costs and the actual costs.

4. That, on or about October 1 of each year, Alltel Missouri, Inc. shall submit to the Staff of the Commission data showing the status of cost recovery.

5. That Alltel Missouri, Inc. and the Staff of the Commission shall monitor the progress of cost recovery and Alltel Missouri, Inc. shall file tariffs with the Commission to eliminate the cost recovery surcharge so that only the actual costs are recovered.

6. That, if Alltel Missouri, Inc. files tariffs to provide revenue neutrality, it shall file a general rate case no sooner than eight months and no later than ten months after October 20, 1999.

³ The Commission notes, without deciding, that certain types of revenue losses that Alltel includes in its revenue neutral calculation may not be attributable to the elimination of the PTC plan. While such revenue losses may be appropriate to consider in setting "going forward" rates in the rate case, if they are not attributable to the elimination of the PTC plan, they would not have been appropriate in the revenue neutral calculation and Alltel may be required to refund them.

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7. That, if Alltel Missouri, Inc. files tariffs to provide revenue neutrality, it shall file supporting documentation with the tariffs.

8. That, no later than ten days after the effective date of this order, Alltel Missouri, Inc. shall notify its customers, as discussed herein, of the availability of intraLATA toll dialing parity.

9. That the Primary Toll Carrier plan is modified and continued only to the extent necessary to accommodate the modifications discussed herein.

10. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

ORDER REGARDING PETITION FOR MODIFICATION

Decided September 21, 1999

On September 10, 1999, ALLTEL Missouri, Inc. (ALLTEL) filed a petition for modification of its IntraLATA Dialing Parity (ILDLP) plan. ALLTEL stated that it wanted to modify its ILDP plan because the plan it proposed and the Commission approved would assign customers who did not choose a primary interexchange carrier (PIC) for intraLATA toll service to their interLATA carrier, and because AT&T is the interLATA PIC for many of its customers. ALLTEL stated that, under the plan it proposed, it is concerned that a number of customers might be defaulted to a 101XXXX dialing pattern. On September 16, 1999, ALLTEL amended its petition for modification. ALLTEL requested that the Commission allow it to modify its plan so that customers who have not chosen a primary interexchange carrier (PIC) for intraLATA toll service by October 20, 1999, will be assigned to its long distance affiliate (ALLTEL Communications, Inc.) rather than to their interLATA carrier, unless their interLATA has specified that it will be an intraLATA carrier. ALLTEL also requested that the Commission authorize it to send a notification letter (a copy of which is attached to its petition) explaining the modification to its customers.

A number of secondary carriers (SCs) proposed ILDP plans that assigned customers who did not choose a PIC to a long distance affiliate of the SC, and the Commission approved these plans. (See, e.g., TO-99-514, In the Matter of the Petition of Mark Twain Rural Telephone Company for Approval of an IntraLATA Dialing Parity Plan.) ALLTEL's proposed modification, as amended, is much like these plans, except for customers whose interLATA carrier has specified that it will also be an intraLATA carrier. The Commission will allow ALLTEL to modify its ILDP plan as requested.

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In order to be even more informative, the Commission will direct ALLTEL to add the following paragraph at the end of the proposed notice:

You will still be able to make toll calls by “dialing around” using a “101XXXX” access number. A list of these “101XXXX” access numbers is available from your local ALLTEL Missouri, Inc. business office.

IT IS THEREFORE ORDERED:

1. That the petition to modify its IntraLATA Dialing Parity plan filed by ALLTEL Missouri, Inc. on September 10, 1999, and amended on September 16, 1999, is granted.
2. That ALLTEL Missouri, Inc. shall provide notice to its customers as discussed herein.
3. That this order shall become effective on October 1, 1999.

Crumpton, Murray, Schemenauer, and Drainer, CC., concur Lumpe, Ch., absent Mills, Deputy Chief Regulatory Law Judge

**In the Matter of the Petition of Green Hills Telephone Corporation
for Approval of an IntraLATA Toll Dialing Parity Plan***

*Case No. TO-99-507
Decided June 10, 1999*

Telecommunications § 33. The Commission determined that a local exchange company’s plan to implement federally-mandated intraLATA toll dialing parity was, with modifications, acceptable, and approved it.

BACKGROUND

On April 22, 1999, Green Hills Telephone Corporation (Green Hills) filed an application with the Commission requesting approval of its plan to implement intraLATA toll dialing parity (ILDLP). This filing was made pursuant to a March 23 order of the Federal Communications Commission (FCC) that required all local exchange companies (LECs) to make such filings. The FCC order, as the

*The Commission, in an order issued on July 15, 1999, denied a rehearing in this case. See pages 176 and 245 for orders regarding Case No. TO-99-254, et al. The Commission issued orders similar to this involving various telephone companies and this issue. Please see the Unreported section of this book.

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Commission intends to comply with it¹, requires the Commission to approve each LEC's ILDP by June 22. It also requires that, assuming the Commission approves the plan by June 22, each LEC implement its plan by July 22. The Commission consolidated Green Hills' ILDP plan filing, and all the LECs' ILDP filings, with Case No. TO-99-254 et al., and held a hearing May 17-26.

FINDINGS OFFACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

Green Hills' ILDP Plan

Green Hills' plan provides that its customers will receive ILDP on July 22, 1999². Green Hills intends to allow its customers to select a carrier for interLATA toll calls and to select the same or a different carrier for intraLATA toll calls.

Cost Recovery

Green Hills proposes to recover the incremental costs of implementing ILDP over a three-year period as a surcharge on the Carrier Common Line (CCL) element for all originating intrastate access minutes.

The following incremental costs were included by Green Hills for recovery: preparing and gaining approval of ILDP; customer notification; business office training; increases in business office work; network software; billing system modifications; network translations; and a 90- day waiver of PIC change charge. The Commission finds that all of these types of costs are appropriate for recovery. Because Green Hills' estimates of these costs will be revised once actual costs are known, the Commission will not enter a finding as to the accuracy of these estimates.

Spreading the costs over all intrastate originating minutes is a reasonable means of recovering the cost of implementation. To limit the recovery to only intraLATA originating minutes would raise those rates too much at a time when competition in this market is just starting. AT&T's proposal to spread the costs

¹ The order provides that, if a state commission has not approved a LEC's plan by June 22, that LEC must file the plan with the FCC's Common Carrier Bureau for approval. Since the Commission is herein approving Applicant's plan, this provision of the FCC's order is moot.

² Green Hills' plan indicates that it will eliminate the PTC plan shortly after the implementation of dialing parity. The rationale is that it will be cheaper and administratively easier to have carriers other than the PTC begin carrying calls at the beginning of an access billing cycle. As a result, customers can choose an intraLATA toll carrier on and after July 22, but that customers that do not choose will continue to be served by the PTC until August 13.

over a period longer than three years would simply drag the process out. The Commission finds that it would not be in the public interest for LECs to still be recovering the costs of ILDP implementation as much as eight years in the future.

This recovery method is the same as the one the Commission approved for Sprint and GTE in their implementation plans. Although the Commission noted that there was no precedential value to that decision, and that each plan recovery method would be evaluated on its own merits, the reasoning that led the Commission to approve this method for GTE and Sprint is equally applicable here.

The Commission will accept Green Hills' cost estimates used to calculate the charges in its tariff, and will order Green Hills to provide the Staff of the Commission with the actual costs when available. It will also order Green Hills to provide the Staff with an annual accounting of the progress of its cost recovery. The Staff and Green Hills should monitor the recovery to ensure the temporary additive is ended as soon as the actual cost of implementation is recovered.

PIC Change Charge Waiver

Green Hills proposed a 90-day waiver of primary interexchange carrier (PIC) change charges. The Commission finds that this period is too short for the type of plan that Green Hills has filed. Customers that have not chosen an intraLATA toll provider within 90 days of the implementation of ILDP will be assigned to Green Hills' IXC affiliate. A customer that is unhappy with that assignment would be required to pay a PIC change charge if the waiver period is only 90 days. The Commission will require Green Hills to provide a 180-day waiver period to allow all customers the opportunity to fully understand the changes with which they are faced, and to fully explore the options they have.

Assignment of Customers and Termination of the PTC Plan

Green Hills proposes that, on July 22, all customers that have not chosen an intraLATA toll carrier will be assigned to its IXC affiliate.

Although AT&T objects to customers being assigned to a LEC affiliate, based upon the testimony of its witnesses at the hearing, it appears to object more strongly to serving these customers itself. None of the other IXCs that provided testimony objected to Green Hills' proposal.

Despite AT&T's position that it does not want to serve Green Hills' customers, but objects to them being served by a LEC IXC affiliate that does, the Commission finds that Green Hills' proposal is reasonable. Customers will have several months to choose an intraLATA toll provider before being assigned to the LEC affiliate. Any competitive advantage that the LEC affiliate may have by getting customers assigned to it will be balanced by the advantage that its competitors will have in getting to the market months earlier.

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Customer Notification

Green Hills' plan states that it will notify its customers of the implementation of ILDP by a separate mailing to each of its customers. This is the appropriate means of notifying customers, and the Commission will approve it.

The Commission finds that the content of the notice should be as clear and concise as possible, while at the same informing customers of the choices they have, and the consequences of those choices. If a notice did not inform customers as much as possible on the questions that are likely to concern them, it would not serve the public interest³. The Commission will direct Green Hills to provide customers upon request a list of all carriers authorized and obligated to provide intraLATA toll service in Green Hills' territory. The Commission will direct Green Hills to provide customers the following notice:

IMPORTANT PUBLIC INTEREST NOTICE

Currently, your intraLATA 1+ and 0+ calls (long distance calls to nearby communities to which long distance charges apply) are carried by Southwestern Bell Telephone Company. This service is called intraLATA toll service. Effective July 22, 1999, you will be able to choose the company you would like to carry these calls. Effective August 13, 1999, Southwestern Bell Telephone will no longer provide this service.

Attached is a list of the companies that have told Green Hills Telephone Corporation that they are willing to carry these calls. You should contact your local Green Hills Telephone Corporation business office or the company you choose to provide this service. If you do not call Green Hills Telephone Corporation or a long distance company of your choice and choose a company to provide this service, **on August 13, 1999, you will automatically be assigned to an affiliate of Green Hills Telephone Corporation to carry these calls.**

Even if your current long distance (interLATA) company is not on the attached list, it may be willing or required by law to provide this service*. You can contact your local Green Hills Telephone Corporation business office for a list of all companies authorized to provide intraLATA toll service in Missouri. If your current long distance (interLATA) company is not on the attached list, and you want it to carry these calls in addition to the long distance calls it now carries, you should contact it.

³ Because AT&T is the selected interLATA carrier for such a large number of customers in SC exchanges such as Green Hills', AT&T is specifically mentioned. The Commission finds that requiring Green Hill to state AT&T's position in the customer notice is necessary to minimize customer confusion.

Please note that the rates and services of each of these companies may be different from each other, and from the rates and services you currently receive from Southwestern Bell Telephone Company. Particularly if you make a lot of calls, or make long calls (such as to connect to an internet service provider (ISP) through a dial-up connection), you should check with your local Green Hills Telephone Corporation business office and the long distance company you choose to find out whether long distances charges will apply to these calls.

For 180 days after July 22, you will be able to choose a company to provide this service and you will not be charged for making the change. **If your current long distance (interLATA) company is not on the attached list and you do not choose another company, after October 20, 1999, you will not be able to make 1+ or 0+ long distance intraLATA calls until you do choose another company.** If you want to change after your initial choice, or make a change after January 20, 2000, you will incur a charge of \$9.00.

*Even though AT&T is not on the attached list, it will carry these calls if you request it.

Carrier Notification

Green Hills stated that it intends to notify interexchange carriers (IXCs) that currently provide service in its exchanges shortly after the filing of its plan.

AT&T was the only party to Case No. TO-99-254 et al. that took the position that a second notice to carriers was necessary. AT&T believed that a second notice after the Commission issues its order on the ILDP plan would allow IXCs to decide whether to participate based on the specifics of the Commission's order. However, as a party, AT&T will be well aware of the specifics of the Commission's order. Furthermore, AT&T testified at the hearing that the specifics of any Commission order approving an ILDP plan would not change its decision on how it will participate. The Commission finds that one notice to IXCs that currently provide service in Green Hills' exchanges is sufficient.

Revenue Neutrality

Green Hills proposes a revenue neutrality adjustment that will be implemented by raising intraLATA Carrier Common Line (CCL) rates. Green Hills proposes to raise these rates as necessary to maintain revenue neutrality, up to the level of interLATA CCL rates. If this increase is not sufficient, Green Hills proposes to raise both interLATA and intraLATA rates and keep them in parity. The rates are also calculated to eliminate the CCL cap, or discounted CCL rate.

The Commission will allow Green Hills to achieve revenue neutrality at the time it implements its ILDP plan. It will do so, however, under a mechanism that allows Green Hills to achieve its desired revenue neutrality while at the same time protecting Green Hills' customers from the possibility that they will be overcharged as a result of the revenue neutrality filing.

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Because an interim filing is necessarily ancillary to a permanent increase in rates (see, *e.g.*, *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, (Mo. App. 1976)) the Commission will approve Green Hills' revenue neutrality filing if it commits to filing a general rate case in which all relevant factors are to be examined no sooner than eight months and no later than ten months after July 22, 1999. Furthermore, the tariffs implementing revenue neutrality should clearly reflect Green Hills' agreement that the increase they implement is to be interim and subject to refund. The interim period over which they are effective shall be from July 22 until the Commission resolves the rate case. The parties shall address in the rate case, the issues of the amount of any decrease in revenues Green Hills suffered as a result of the elimination of the PTC plan, and whether the interim tariffs over-recovered the decrease in revenues. Green Hills shall bear the burden of proof on these issues. Green Hills shall refund any amount determined to be over-recovery to each of the entities that paid the interim increase, according to the percentage that entity paid. Interest shall be applied to the refund at the rate of nine percent per annum.

Green Hills has proposed that its interim increase be subject to refund based upon an examination of actual revenue changes for a period of time after the termination of the PTC plan, and the Commission has accepted that proposal. Therefore, the questions of the accuracy of Green Hills' estimates of revenue losses, and even of the categories of revenue losses attributable to the elimination of the PTC plan⁴, need not be resolved at this time; they will be addressed in Green Hills' rate case. In addition, the Commission finds that the rate elements that Green Hills proposes to adjust are appropriate and sufficiently competitively neutral.

So that the Commission and its Staff can examine the revenue neutrality calculations, the Commission will order Green Hills to file all supporting documentation with its revenue neutrality tariffs.

Feature Group D Requirement

Green Hills' filed ILDP plan proposal would require that, by July 22, 2000, all LECs use Feature Group D (FGD) signaling protocols. As discussed in more detail in the Report and Order in Case No. TO-99-254 et al. (issued simultaneously with this Report and Order)⁵, the evidence has wholly failed to demonstrate that the

⁴ The Commission notes, without deciding, that certain types of revenue losses that Green Hills includes in its revenue neutral calculation may not be attributable to the elimination of the PTC plan. While such revenue losses may be appropriate to consider in setting "going forward" rates in the rate case, if they are not attributable to the elimination of the PTC plan, they would not have been appropriate in the revenue neutral calculation and Green Hills may be required to refund them.

⁵ The Report and Order in Case No. TO-99-254 is incorporated by reference, and all of the discussion, findings of fact, and conclusions of law contained therein are made a part of this Report and Order as though fully set forth herein.

conversion of the LEC-to-LEC Feature Group C (FGC) network that this requirement would necessitate is advisable⁶. Accordingly, the Commission will direct Green Hills to file tariffs implementing ILDP that do not contain this requirement.

Billing and Collection and Network Changes

Green Hills proposes to change its tariffed rates for billing and collection. Such changes are not directly related to either the implementation of ILDP or the termination of the PTC plan, and should not be made in those tariff filings. Green Hills may file other tariffs that address billing and collection, but the Commission will evaluate them separately from the implementation of ILDP and the termination of the PTC plan.

Green Hills also purports to reserve a right to make unilateral changes to its network. Since Green Hills does not make any specific proposals or request Commission approval, the Commission will not address this point.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

Green Hills is a public utility and a telephone company subject to the Commission's jurisdiction under Section 386.250 and Chapter 392, RSMo 1994. The Federal Telecommunications Act of 1996 and the Federal Communications Commission require LECs such as Green Hills to implement intraLATA equal access. Green Hills has submitted an intraLATA dialing parity implementation plan to this Commission for approval. Based upon its findings of fact, the Commission has determined that the Plan should be approved as modified.

IT IS THEREFORE ORDERED:

1. That the intraLATA dialing parity plan filed by Green Hills Telephone Corporation on April 22, 1999 is approved with the modifications discussed herein.
2. That Green Hills Telephone Corporation shall file tariffs implementing intraLATA dialing parity consistent with this Report and Order.
3. That, as soon as they are available, Green Hills Telephone Corporation shall submit to the Staff of the Commission data showing the actual cost of implementing intraLATA dialing parity. If necessary, Green Hills Telephone Corporation shall file revised tariffs to reflect the difference between the estimated costs and the actual costs.
4. That, on or about October 1 of each year, Green Hills Telephone Corporation shall submit to the Staff of the Commission data showing the status of cost recovery.

⁶ In fact, it appears uncontroverted that such conversion would not be possible in the time between the issuance of this order and July 22. In order to comply with this requirement during the period of time in which they are converting their network (or for an indefinite period if they decide not to convert their network), the PTCs would have to contract with an IXC or IXCs to carry their intraLATA toll traffic.

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5. That Green Hills Telephone Corporation the Staff of the Commission shall monitor the progress of cost recovery and Green Hills Telephone Corporation shall file tariffs with the Commission to eliminate the cost recovery surcharge so that only the actual costs are recovered.

6. That, if Green Hills Telephone Corporation files tariffs to provide revenue neutrality, it shall file a general rate case no sooner than eight months and no later than ten months after October 20, 1999.

7. That, if Green Hills Telephone Corporation files tariffs to provide revenue neutrality, it shall file supporting documentation with the tariffs.

8. That, within ten days of the effective date of this order, Green Hills Telephone Corporation shall notify its customers, as discussed herein, of the availability of intraLATA toll dialing parity.

9. That the Primary Toll Carrier plan is modified and continued only to the extent necessary to accommodate the modifications discussed herein.

10. That this order shall become effective on June 21, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Mills, Deputy Chief Regulatory Law Judge

**In the Matter of Laclede Gas Company's Tariff Sheets Designed
to Extend for an Additional Period the Experimental Price
Stabilization Fund.**

Case No. GO-98-484

Decided June 15, 1999

Gas § 17.2. After hearing, the Commission granted Laclede's request to extend the experimental Price Stabilization Program (PSP) for an additional three years and to make certain modifications to the program. The Commission also directed that additional modifications shall be made to the PSP, including a change regarding non-winter month transactions, how the TSP (confidential term) will be calculated in specific situations, adjustments to the sharing mechanisms in the overall cost reduction, and a provision giving the Commission the right to review the program annually and revise it to correct any major deficiencies.

APPEARANCES

Michael C. Pendergast, Associate General Counsel, and *Thomas M. Byrne*, Associate Counsel, Laclede Gas Company, 720 Olive Street, Suite 1530, St. Louis, Missouri 63101, for Laclede Gas Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Thomas R. Schwarz, Jr., Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORYLAWJUDGE: Vicky Ruth.

REPORT AND ORDER

Procedural History

The Commission initially approved Laclede Gas Company's (Laclede's) experimental Price Stabilization Program (PSP)¹ as part of the 1997 Stipulation and Agreement approved in Case No. GO-97-401. The tariff approved in that case provides that the PSP shall be terminated July 31, 1998, unless otherwise ordered by the Commission. The PSP was proposed in order to reduce the impact of natural gas price volatility on Laclede's customers during the 1997/1998 winter season.

On April 28, 1998, Laclede Gas Company (Laclede) filed a tariff sheet designed to extend the experimental PSP for an additional term, an Application to Extend Experimental Price Stabilization Fund and Request for Prehearing Conference, and a Motion for Protective Order.

Staff filed a memorandum on May 20, 1998, in which it recommended approval of the tariff sheet extending the PSP, with modifications proposed by Laclede, and requested a prehearing conference to permit the parties to discuss other program changes proposed by Laclede. On May 26, 1998, the Commission issued an order approving the tariffs with the changes jointly recommended by the parties. The tariffs extended the program for an additional year, provided that the Price Stabilization Charge shall end with the effective date of the 1999 summer PGA filing, and determined that any ending balance in the fund be charged to or returned to ratepayers through the ACA factors established in the winter PGA filing.

Pursuant to the Commission's May 26, 1998, order, the parties met on June 11, 1998, and submitted a proposed procedural schedule on June 22, 1998, in order to litigate the remaining modifications proposed by Laclede but opposed by Staff. The Commission issued a procedural schedule on July 7, 1998, and, at the parties' request, modified it on July 22, 1998. Laclede submitted direct testimony on July 2, 1998. Staff submitted rebuttal testimony on July 30, 1998. Laclede filed surrebuttal testimony on August 5, 1998.

A hearing was held on August 10, 1998. The parties filed simultaneous initial briefs on September 25, 1998, and reply briefs were filed on October 3, 1998. OPC filed a letter on the same date indicating that it would not file a reply brief.

¹This program is referred to as both the Price Stabilization Program and the Price Stabilization Fund.

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Pending Motion

On February 19, 1999, Laclede filed a request for an on-the-record presentation involving Case No. TO-98-484, the present case, and Case No. GT-99-303, In the Matter of the Laclede Gas Company's Tariff Sheets to Extend and Revise the Company's Gas Supply Incentive Plan. Laclede notes that it has developed and submitted two incentive proposals relating to the procurement and management of its gas supply assets. The first proposal is the subject of the present case, and it establishes an incentive Price Stabilization Program to replace Laclede's current hedging program. The second proposal pertains to Case No. GT-99-303 and seeks to extend and revise certain elements of Laclede's Gas Supply Incentive Plan (GSIP), which is scheduled to terminate on September 30, 1999 (hereinafter referred to as the GSIP II Proposal). The GSIP II Proposal was filed on January 14, 1999, and is currently scheduled to be heard in August 1999.

Laclede requests an on-the-record presentation to address these issues and asks that the Commission thereafter approve Laclede's Incentive Hedging Proposal. Staff filed a reply on March 5, 1999, indicating that it believes that the evidence in this case has been extensive and the parties' briefs adequately address the issues, and that an additional on-the-record presentation is unnecessary.

The Commission has reviewed Laclede's motion for an on-the-record presentation and the Staff's reply. The Commission appreciates both Laclede's willingness to provide the Commission with additional evidence and the patience of the parties; however, the Commission concludes that such a presentation is unnecessary in this case. The Commission addressed Laclede's request for an on-the-record presentation in Case No. GT-99-303 in an order issued April 13, 1999.

Discussion

As noted above, the objective of the current PSP is to mitigate the effects of sudden spikes in the price of natural gas. Laclede uses a common industry practice of pricing natural gas by reference to indices of spot market prices. The issue before the Commission is whether Laclede's request for modifications to the experimental PSP should be granted.

I. Laclede's Position

Laclede's proposal would allow it to trade in and out of financial instruments once a hedge position has been established. The parties disagree as to how Laclede should be permitted to acquire and use financial instruments for the winter of 1999/2000. Laclede's original proposal recommends that three major changes be made to the PSP. First, Laclede proposes to eliminate the program's existing restriction on when financial instruments may be sold and adopt an approach that gives Laclede greater flexibility to trade in and out of these instruments when market conditions warrant. This would allow Laclede to more effectively manage the volatility of the market. Laclede alleges that this will create opportunity to reduce the overall cost of acquiring

price protection for Laclede and its ratepayers. Second, Laclede proposes to incorporate an “incentive feature” into its PSP. Laclede argues that in exchange for undertaking the risks inherent in guaranteeing price protection, it should have a corresponding opportunity to benefit from it if achieves positive results. Third, Laclede proposes a three-year term for the program. Laclede contends that the longer authorization period would provide the Commission with sufficient experience with the operation of the program under varying conditions and permit a fair assessment of its effectiveness, and that this would reduce the expense of the annual review which is costly to both the Commission and to Laclede.

Laclede also proposes to modify the tariff approved in Case No. GO-97-401 in order to clarify the procedures to be followed at the end of the experiment.

However, in response to concerns raised by Staff, Laclede made modifications to its original proposal, resulting in its Alternative B plan. Under the Alternative B plan, Laclede withdrew its request to use certain types of instruments and adjusted the percentage which Laclede would pay of the increased costs for the volumes which are required to be covered under the program, thus providing an absolute cap on the cost to the ratepayers of these volumes. In exchange for assuming this additional risk, the Alternative B plan increases the percentage of gains which Laclede would receive in specified instances. Laclede also indicates that it is willing to further modify its program to address certain concerns which were expressed by Commissioners at the hearing. For example, Laclede proposes to revise its method of calculating the TSP², and to adjust the sharing mechanism in the Overall Cost Reduction Incentive. In addition, Laclede offered to modify the proposal to give the Commission the right, but not the obligation, to review the program annually and, if necessary, revise it to correct any major deficiencies on or before February 15 of each year of the program.

II. Staff's Position

Staff argues that the current program provides substantial benefit to Laclede's ratepayers by potentially obtaining effective price protection from spikes in natural gas prices for the company's heating gas supply. Staff notes that the current program is funded by a surcharge on ratepayers, which Laclede uses to secure financial instruments as a hedge against high gas prices. The Staff emphasizes that although the current hedging program acknowledges the possibility of financial gain to ratepayers, the actual purpose of the program is the protection of ratepayers from high gas prices during the period of the customers' greatest consumption. Staff alleges that Laclede's proposal modifies the program objective to include the pursuit of financial gain, and that these modifications increase the potential risk to the ratepayers.

² The term TSP is not defined here because it was designated by Laclede as highly confidential.

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Staff notes that Laclede proposes to liquidate hedge positions when doing so would result in gain and rehedging at a later time. However, Staff argues that Laclede proposes to move from protection to speculation and that Laclede has not provided the Commission with adequate assurances that the ratepayers will be protected. A major flaw in Laclede's proposal, according to the Staff, is that it denies the speculative nature of the market which requires a loss to match every gain. Staff is particularly concerned that Laclede refuses to openly acknowledge the speculative aspects of its proposals and has failed to suggest discrete limits to ratepayer exposure in specific trading situations.

Staff also alleges that there is an incentive for Laclede to act in the interest of the shareholders at the expense of ratepayers, and that the plan imposes additional costs on ratepayers. Furthermore, the Staff states that there is an inability to terminate the plan if the results are unfavorable.

Staff argues that the record does not establish adequate details on critical elements of Laclede's plan. Staff contends that Laclede has indicated that the detailed analysis necessary to support this type of program does not exist. Staff alleges that it is unacceptable that Laclede failed to generate adequate documentation for the proposal. Staff targets several other problems with Laclede's proposal, including Laclede's provision that ratepayers bear all the transaction costs for the program.

III. Office of Public Counsel's Position

The Office of the Public Counsel (OPC) opposes Laclede's proposal to modify its current PSP program. OPC argues that the current program is designed to provide price protection to Laclede's ratepayers and that Laclede is attempting to modify it to a program that makes the purchasing of financial instruments another "profit center" for Laclede. OPC contends that Laclede's new program is very complex and vague. OPC also argues that the new program allows Laclede to speculate with ratepayers' money but it does not help Laclede achieve the program goal of providing price protection for its ratepayers.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision, or that specifics of the evidence are not discussed herein because of their designation as "Highly Confidential" material.

The Commission finds that Laclede's request to extend or modify the experimental PSP should be granted. The Commission will approve Laclede's Alternative B plan with the additional modifications Laclede agreed to during the hearing and in

its posthearing briefs. These additional modifications include a provision regarding non-winter month transactions, how the TSP will be calculated in specific situations, adjustments to the sharing mechanism in the overall cost reduction, and a provision giving the Commission the right, but not the obligation, to review the program annually and, if necessary, revise it to correct any major deficiencies on or before February 15 of each year of the program.

In the interests of clarity, Laclede is directed to file a revised Price Stabilization Program which clearly embodies the modifications found in the Alternative B plan and includes the changes proposed by Laclede in its posthearing briefs. The Commission finds that the Alternative B plan with these additional modifications provides benefits to ratepayers regarding guaranteed catastrophic price protection and provides the potential for ratepayers to share in gains and cost savings, while also providing Laclede a financial incentive to optimize price protection in a prudent manner.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Laclede is a regulated public utility over which the Commission has jurisdiction in accordance with Chapters 386 and 393, RSMo 1994.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 536.140, RSMo 1994. Based upon the complete record, the Commission concludes that Laclede's proposed modifications to the PSP are justified by substantial and competent evidence and shall be approved. Accordingly, the Commission shall approve Laclede's proposed modifications.

IT IS THEREFORE ORDERED:

1. That Laclede's application for modifications to the Price Stabilization Program, as amended by Alternative Plan B and the additional changes proposed in Laclede's posthearing briefs, is granted.

2. That the tariff filed by Laclede Gas Company on April 28, 1998, is rejected. However, Laclede Gas Company is directed to file a revised tariff sheet, and a new program description, incorporating the modifications approved in Ordered Paragraph 1, by June 30, 1999. The tariff rejected is as follows:

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First Revised Sheet No. 28-e Cancelling Original Sheet No. 28-e

3. That Staff shall file a report by July 12, 1999, which states whether Laclede Gas Company's new program description and tariff complies with this Report and Order.

4. That any pending motions or objections not specifically ruled on in this order are hereby denied or overruled.

5. That this Report and Order shall become effective on June 25, 1999.

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Crumpton, Drainer, and Murray, CC., concur; Lumpe, Ch., and Schemenauer, C., dissent, with separate dissenting opinion; certify compliance with the provisions of Section 536.080, RSMo 1994.

**Dissenting Opinion of Chair Sheila Lumpe and
Commissioner Robert Schemenauer**

We respectfully disagree with the majority in case number GO-98-484. The Report and Order approved by the majority will allow Laclede Gas Company to modify the currently approved Experimental Price Stabilization Fund. The changes will permit Laclede to trade in and out of financial instruments once a hedge position has been established. Laclede argues that these changes will permit it to respond more efficiently to changes in the market to improve the position of both the company and its ratepayers. We fear that the changes will instead allow Laclede to speculate in the market while putting its ratepayers at risk.

The purpose of the Experimental Price Stabilization Fund is to permit Laclede to purchase and hold financial instruments in its efforts to reduce the volatility of its cost of natural gas. Laclede's ratepayers would thus be protected from the volatility of the natural gas market. The changes proposed by Laclede and approved by the majority will allow Laclede to stray from that basic objective by permitting Laclede to buy and sell financial instruments after establishing its hedge position, if it believes that it can make a profit by doing so. Thus the purpose of the Price Stabilization Fund is changed from protecting ratepayers from radical price fluctuations, to attempting to make a speculative profit for Laclede's shareholders through the trading of financial instruments. Laclede proposes to share a portion of these profits with its ratepayers, presupposing that there will be profits. In the meantime the ratepayers are endangered by the downside risks associated with the financial speculation proposed by Laclede.

For all of its willingness to speculate with the money of the ratepayers, Laclede's proposal is remarkably short on details. Critical terms are ill-defined; critical processes are undescribed; insufficient evidence was presented to support the belief that Laclede's gas supply personnel are able to foretell natural gas market movements so as to ensure a profit. Laclede asks that its proposal be approved for a period of three years. But it does not provide any definite criteria to permit the termination of the program before that time if that becomes necessary. The ratepayers will bear all transaction costs while Laclede's shareholders will share in the benefits. The proposal does not contain adequate assurances of how ratepayers will be protected.

It seems that Laclede is asking the Commission to simply trust it to do the right thing, suggesting that its ratepayers will ultimately benefit from its financial dealings. Laclede's ratepayers are perfectly capable of speculating in the financial markets if

they choose to do so. Those ratepayers do not, however, expect Laclede to use the ratepayers' money to engage in such speculation.

The majority would permit Laclede to speculate in the financial market to the possible detriment of its ratepayers. For that reason we dissent.

**Missouri Coalition for Fair Competition, Petitioner, v. AmerenUE,
Respondent.**

Case No. EC-99-327
Decided June 15, 1999

Electric § . Commission approved agreement of the parties in case involving violations of the HVAC Act, Sections 386.754-386.764, RSMo 2000, which imposes restrictions on public utilities with respect to the business of selling, installing, repairing, and maintaining heating, ventilating and air conditioning equipment, wherein AmerenUE agreed to stop the offending conduct and further agreed to not engage in HVAC-related services prior to December 31, 2001, and Complainant agreed to seek the dismissal of this case and recommended that no fines be imposed upon AmerenUE.

**ORDER APPROVING STIPULATION AND
AGREEMENT AND CLOSING CASE**

The Missouri Coalition for Fair Competition, Petitioner, filed its formal complaint on February 3, 1999, seeking the imposition of monetary penalties on Respondent Union Electric Company, doing business as AmerenUE (UE), pursuant to Section 386.756, RSMo Supp. 1998. On February 4, 1999, this Commission issued its Notice of Complaint. On March 8, 1999, UE filed its Answer. On March 16, 1999, the Commission by order set a prehearing conference and required the filing of a proposed procedural schedule. The prehearing conference was held on March 26, 1999, and the proposed procedural schedule was filed on April 1, 1999. The proposed procedural schedule was established by order issued on April 13, 1999, with a correction order issued on April 14, 1999.

On May 28, 1999, the parties filed their Stipulation and Agreement disposing of all issues. Because, under the procedural schedule, direct testimony was due to be filed on June 1, 1999, the Commission issued its order suspending the procedural schedule while it considers the parties' Stipulation and Agreement. On June 3, 1999, Complainant moved to dismiss the Complaint and further moved the Commission to approve the Stipulation and Agreement of the parties and to impose no financial penalties on Respondent. On June 7, 1999, Staff filed its memorandum in support of the Stipulation and Agreement.

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Discussion

This matter arises out of a complaint filed against UE alleging violations of the “HVAC Act,” Sections 386.754-386.764, RSMo Supp. 1998.¹ The HVAC Act places restrictions on public utilities with respect to the business of selling, installing, repairing, and maintaining heating, ventilating and air conditioning equipment. The Complainant herein, the Missouri Coalition for Fair Competition, is an association of independent heating, ventilating and air conditioning businesses. Under the parties’ agreement, UE will stop the offending conduct and will not repeat it. Further, UE will not engage in HVAC-related services prior to December 31, 2001. In return, Complainant will seek the dismissal of this case and recommend that no fines be imposed upon UE. The parties agree that this is a satisfactory resolution of this matter.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

In January 1999, subsequent to the effective date of the HVAC Act, UE caused to be mailed to one or more of its customers a monthly bill including a reference to the On-Call Appliance Plan in the customer bulletin section, as follows:

ON-CALL APPLIANCE PLAN—a low monthly payment covers the cost of repairing your furnace, air conditioner, and water heater. Optional coverages are also available for other home appliances. Call 1-888-ONCALL3 for more information about AmerenUE’s On-Call Appliance Plan—offering fast, quality repairs and avoiding financial surprises when you can least afford them.

Sometime after November 1998, after the effective date of the HVAC Act, UE caused to be mailed or delivered to one or more persons a Hello, Neighbor! survey card, which included a reference to the On-Call Appliance Plan, as follows:

3. Would you like information on the AmerenUE On-Call Appliance Warranty plan that protects you from unexpected repair bills for your furnace, air conditioner, and other appliances?

Neither on the bill nor on the survey card was there a disclaimer indicating that the service in question is not subject to regulation by the Missouri Public Service Commission.

¹ “HVAC” stands for heating, ventilating and air conditioning.

The bill and the survey card show that UE was engaged in heating, ventilating and air conditioning services in the state of Missouri. UE was not engaged in such services on an emergency basis nor pursuant to an existing statute or rule or order of this Commission, and had not been engaged in such services for the next preceding five years.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Missouri Public Service Commission has “full authority to administer and ensure compliance with Sections 386.754 to 386.764,” the HVAC Act.

Based on its findings of fact herein, the Commission determines that UE has violated Section 386.756, .1 and .3, RSMo Supp. 1998.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998. Based upon the Commission's review of the applicable law and the Stipulation and Agreement of the parties, the Commission concludes that the Stipulation and Agreement should be approved.

In the Stipulation and Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties is approved.
2. That this order shall become effective on June 25, 1999.
3. That this case may be closed on June 28, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

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**Petition of BroadSpan Communications, Inc. for Arbitration of
Unresolved Interconnection Issues Regarding ADSL with South-
western Bell Telephone Company.***

Case No. TO-99-370

Decided June 15, 1999

Telecommunications §36. Section 252(b)(1) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996, provides that “during the period of the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.”

Telecommunications §36. Section 252(d) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

Determinations by a State Commission of the just and reasonable rate for . . . network elements for purposes of subsection (c)(3) of such section –

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the . . . network element . . . , and

(ii) nondiscriminatory, and

(B) may included a reasonable profit.

Telecommunications §36. In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission established a nonrecurring loop qualification rate of \$15.00 per loop for provisioning of ADSL service using unbundled network elements.

Telecommunications §36. In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission rejected a plan that would establish a small monthly recurring charge and instead established non-recurring, up-front charges for conditioning loops for provisioning ADSL service using unbundled network elements.

Telecommunications §36. In an arbitration case between an Incumbent Local Exchange Carrier (ILEC) and a Competitive Local Exchange Carrier (CLEC), the Commission found that the non-recurring charge for a shielded cross-connect should be the same as the charge for a non-shielded cross-connect.

APPEARANCES

Katherine Swaller, Counsel, One Bell Center, Suite 3536, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Carl J. Lumley, Attorney at Law, Curtis, Oetting, Heinz, Garrett & Soule, P.C. 130 South Bemiston, Suite 200, Clayton, Missouri 63105, and

Colleen M. Dale, Attorney at Law, 11756 Borman Drive, Suite 101, St. Louis, Missouri 63146, for BroadSpan Communications, Inc.

REGULATORY LAW JUDGE: Morris L. Woodruff

*The Commission, in an order issued on July 27, 1999, denied a request for a rehearing.

ARBITRATION ORDER

Procedural History

On March 1, 1999, BroadSpan Communications, Inc., d/b/a Primary Network Communications (BroadSpan) filed a petition seeking arbitration of unresolved interconnection issues regarding Asymmetrical Digital Subscriber Line (ADSL) with Southwestern Bell Telephone Company (SWBT). BroadSpan's Petition is based on the requirements of Section 252(b) of the Telecommunications Act of 1996, which requires state commissions, such as the Missouri Public Service Commission, to arbitrate interconnection disputes between an incumbent local exchange carrier (ILEC) and a telecommunications carrier as defined in the Telecommunications Act. SWBT is an ILEC as defined in the Telecommunications Act and BroadSpan meets the Act's definition of telecommunications carrier.

On August 12, 1998, the Commission approved an Interconnection Agreement between BroadSpan and SWBT. On September 22, BroadSpan made a request to SWBT for access to ADSL technologies as unbundled network elements (UNEs). SWBT provided a quote for those services on January 19, 1999. BroadSpan and SWBT were able to reach agreement on all issues surrounding its request other than rates. BroadSpan filed a petition for arbitration of unresolved interconnection issues regarding ADSL on March 1. SWBT filed its answer to BroadSpan's petition on March 22. Both parties filed direct testimony on April 15 and rebuttal testimony followed on April 22. A hearing was conducted on May 6. BroadSpan and SWBT each filed post-hearing briefs on June 1.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Loop Qualification

ADSL technology allows a customer to use existing copper phone lines to transmit and receive data at an increased speed. However, certain devices that may be necessary to provide voice service over that phone line will interfere with the ADSL signal. If the customer's phone line does contain such interferors, they must be disconnected from the line before ADSL service can be provided. In addition, the length of the loop, apart from the presence of any interferors, may limit or prevent the provision of ADSL service.

SWBT has agreed to provide ADSL capable loops to BroadSpan as an unbundled network element. However, before BroadSpan could utilize a particular

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loop to provide ADSL service to a customer, it must learn whether or not any interferors are present on that line. SWBT is offering BroadSpan a two-step process for determining what, if any interferors are present on a loop. The first step is a pre-qualification tool. This would allow BroadSpan to access an electronic database where all loops have been divided into Distribution Areas. This database does not contain information about the exact make-up of individual loops. Instead it broadly categorizes loops by length and composition. If BroadSpan inquires about the loop serving a given address, the pre-qualification database will indicate whether the loop is of a length that is likely to permit the provision of ADSL service and whether or not the loop is copper. SWBT provides the pre-qualification service at no extra cost beyond the charge for Operational Support System (OSS) connectivity, which is not at issue in this case.

If, after accessing the pre-qualification database, BroadSpan wishes to proceed further, it must request that SWBT qualify the loop. SWBT's testimony indicated that the loop qualification process is at present a totally manual process. In other words a SWBT engineer must physically pull out a paper map and examine the representation of the loop to determine whether or not any interferors are on the line. SWBT represented that at this time its cost for providing a manual loop qualification service is \$84.15 and it proposes to charge BroadSpan that amount. SWBT's testimony did indicate that it plans to have a partially mechanized loop qualification process in place by August 1, 1999. Once this new process is in place, SWBT proposes to charge BroadSpan between \$15.00 and \$20.00 per loop for loop qualification.

BroadSpan argued that the cost of providing loop qualification should be included in OSS charges and should not be subject to an additional charge. Even if SWBT is to receive additional compensation for loop qualification, BroadSpan argued that its prices, based on manual and partial mechanical processes, do not meet the Total Element Long Run Incremental Cost (TELRIC) standard imposed by federal regulation (47 CFR 51.505(b)(1)) and previously adopted by this Commission. TELRIC principles require that prices of unbundled network elements be based on forward-looking economic cost, which must be measured based on the use of the most efficient telecommunications technology currently available. BroadSpan was not able to propose an exact cost for loop qualification under TELRIC principles but suggested that the Commission adopt the rate proposed by the staff of the Texas Public Utility Commission, \$2.56 per loop.

Section 252(d) of the Telecommunications Act provides that the price to be established for the provision of unbundled network elements is to be based on the cost of providing that element. Furthermore, 47 CFR 51.505(b)(1) indicates that the TELRIC cost of an element should be measured "based on the use of the most efficient telecommunications technology currently available. . . ." BroadSpan argues that the use of an electronic database to perform loop qualifications is bound to be more efficient than manually looking at paper maps and that therefore the cost of providing

that service should be based on the use of such an electronic database, resulting in a lower cost.

The problem with BroadSpan's argument is that no such electronic database currently exists for SWBT's system. Indeed there was no testimony to establish that such a database exists for any other ILEC. SWBT's witness testified that because of the vast number of loops existing in its system and because most of those loops will never be considered for ADSL service, it may never be economical to transfer all of the information necessary to do a loop qualification into an electronic database. Under the circumstances it would be unfair to require SWBT to offer a loop qualification service based upon speculation about the cost of providing that service through a non-existent and perhaps inefficient electronic system.

SWBT proposes to charge \$84.15 per loop for its current all-manual loop qualification process until August 1, 1999, when it expects to have a partially mechanized process in place. After August 1, SWBT proposes to charge \$15.00 per line as an interim rate with a cap of \$20.00 per line after a TELRIC study is performed. The evidence indicated that BroadSpan most likely would never have to pay the proposed \$84.15 charge because it is unlikely that BroadSpan will be able to begin providing services before August 1. In any event, the proposed \$84.15 per loop charge is clearly excessive in that it is based on a completely manual process that is obviously obsolete since it will be replaced by an improved process on August 1. However, the partially mechanized process that SWBT plans to inaugurate on August 1 does appear to be the most efficient telecommunications technology available at this time. While it was glad to speculate about the services that a more efficient SWBT might provide, BroadSpan did not present any convincing evidence that a more efficient technology is available.

SWBT presented evidence that its proposed charge of \$15.00 per loop is fair and reasonable and necessary to recover its costs. Contrary to BroadSpan's assertion, a nonrecurring charge in that amount should not prove to be a substantial barrier to competition. Therefore, the nonrecurring loop qualification rate will be set at \$15.00 per loop.

Loop Conditioning

The ADSL service that BroadSpan seeks to provide is offered over the same 2-wire 8dB copper loops that SWBT is currently using for voice transmission. Some of those loops contain devices that are useful and sometimes necessary for voice transmission. Those same devices will, however, impede or prevent the transmission of data through the ADSL signal. In order for the 8dB loop to be used for ADSL service, the loop must be disconnected from those devices. SWBT proposes to require BroadSpan to pay for the cost of disconnecting those devices in an up-front manner when BroadSpan requests that the loop be conditioned for provision of ADSL service.

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The FCC's interpretation of federal law requires SWBT to perform the conditioning work requested by BroadSpan. However, it also requires that BroadSpan compensate SWBT for the cost of such conditioning. (FCC Docket No. 96098 at paragraph 382) The fact that BroadSpan must compensate SWBT for the cost of conditioning the loops it requests is not disputed. However, the parties disagree sharply concerning how SWBT is to be compensated for its work.

Rather than paying up-front non-recurring charges for the work required to condition the loops, BroadSpan proposes that the Commission establish a monthly recurring charge of \$0.62 applicable to all ADSL loops up to 17,500 feet. For loops in excess of 17,500 feet BroadSpan asks the Commission to require SWBT to develop and submit for approval in subsequent proceedings, discrete pricing components for an "individual case basis" charge for conditioning of such loops.

BroadSpan argues that the use of a relatively small monthly recurring charge is reasonable because the conditioning of a loop to allow the provision of ADSL is a permanent improvement to SWBT's system. BroadSpan suggests that the cost of creating that improvement should be capitalized and recovered over time as would the cost of any other capital improvement.

BroadSpan's argument must fail because it was unable to establish that the work required to condition a loop for provision of ADSL service is in fact a capital improvement. The devices that must be disconnected from the loop if ADSL service is to be offered over that loop are still valuable elements of SWBT's voice network. Indeed, under some circumstances, if BroadSpan's customer no longer wants ADSL service and SWBT finds that it once again needs to use the loop for voice service, it may have to reconnect the interfering devices.

A larger problem with BroadSpan's argument is that it is based on speculation about how many loops will be leased for ADSL services. Without some firm knowledge about how many loops will be leased and how long they will be leased, it is impossible to devise a recurring charge that will fully compensate SWBT for the up-front costs it must incur to condition the loop for BroadSpan's use.

BroadSpan is concerned that the imposition of large up-front charges will discourage the entry of competition in the provision of ADSL services. BroadSpan points out that if SWBT's non-recurring, up-front charges are allowed, the first company that provides ADSL service on a line that requires conditioning will be required to either absorb the conditioning costs or pass them on to the customer, either directly or through higher rates. If the costs of conditioning are passed directly to the customer, the increased costs would discourage the use of ADSL service. If the conditioning costs are recovered through higher rates, the first company that pays for conditioning is at risk that a competitor, that does not have to pay for conditioning the loop, will be able to undercut rates and steal the customer. If it no longer has the customer, the competitive company would no longer have the means to recover the conditioning cost.

Interestingly, the risks that BroadSpan would face in recovering conditioning costs through higher rates, which BroadSpan decries as anti-competitive when applied to BroadSpan, are exactly the same risks that BroadSpan urges the Commission to impose on SWBT when it suggests that SWBT recover its expenses of conditioning through a recurring charge. No doubt those risks are real. However, the actual risk is diminished by the fact that the risk runs both ways. If SWBT or some other phone company pays to condition a loop for its customer, BroadSpan can steal that company's customer as easily as its own customer can be stolen. That is the nature of competition. If BroadSpan believes that, despite the risks, it is commercially feasible to provide ADSL service to customers on loops that require conditioning, it may develop rates that make such service possible. However, it is not fair to require SWBT to absorb the risk of providing that service on behalf of BroadSpan.

The danger that competitors will be discouraged from entering the ADSL field by the risks of paying for conditioning the required loops is reduced by the fact that most loops that BroadSpan or other competitors will obtain from SWBT will not require any conditioning. If BroadSpan wants to avoid paying the cost of conditioning loops, it can easily do so by declining to serve customers that can only be served over lines that require conditioning. Certainly the facilitation of service to a large number of customers is a worthy goal. However, SWBT should not be required to assume the risk of doing so while BroadSpan is allowed to collect the profits from its customers.

BroadSpan's proposal to compensate SWBT for the cost of conditioning its loops through a recurring charge will not be accepted. The next question then becomes, how much should SWBT be allowed to charge BroadSpan for those services?

SWBT's proposed charges are based on its own interviews with its employees to determine the amount of time required to complete the tasks necessary to disconnect ADSL lines from interfering devices. BroadSpan's testimony was able to call into question the accuracy of those estimates. However, BroadSpan did not offer any competing estimates of the time and resulting cost required to disconnect the interferers. Instead BroadSpan suggested that SWBT's cost estimates should be arbitrarily reduced by 50 percent because SWBT's time estimates were reduced by that amount in a previous, unrelated, arbitration (TO-97-40 and TO-98-115).

The Commission will decline to arbitrarily adopt the 50 percent reduction urged by BroadSpan. Nevertheless, some adjustment to SWBT's cost estimates is appropriate. Barry Moore testified on behalf of SWBT that the cost studies that formed the basis for SWBT's proposed charges to BroadSpan are also the basis for SWBT's plan to charge its retail customers an up-front, non-recurring charge of \$900 if they wish to receive ADSL service from SWBT on a loop that requires any amount of conditioning. The \$900 charge was based on a weighted average derived from the same figures that SWBT proposed to charge BroadSpan for removing individual interferers. The figures were left broken down because that would allow BroadSpan

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greater flexibility in deciding which lines to pay to have conditioned. SWBT has therefore established a retail cost for conditioning a loop for provision of ADSL service. A retail discount rate of 19.2 percent was established in the AT&T/MCI/SWBT arbitration (PSC Case Nos. TO-97-40 and TO-97-67). The Commission will reduce the conditioning charges proposed by SWBT to be charged to BroadSpan by 19.2 percent.

SWBT proposed to charge BroadSpan the following non-recurring charges for disconnecting interfering devices:

Removal of Repeater Option	\$358.30
Removal of Bridged Tap Option	\$599.25
Removal of Load Coil Option	\$987.35

When the 19.2 percent retail discount is applied to those figures the result is the following:

Removal of Repeater Option	$\$358.30 - \$68.79 = \$289.51$
Removal of Bridged Tap Option	$\$599.25 - \$115.06 = \$484.19$
Removal of Load Coil Option	$\$987.35 - \$189.57 = \$797.78$

SWBT will be allowed to charge BroadSpan these amounts for the removal of interferors on loops between 12,000 and 17,500 feet in length.

For loops beyond 17,500 feet in length, SWBT proposed to determine the cost of conditioning on an individual case basis. BroadSpan agreed that the cost of conditioning such lines could be determined on an individual case basis but asked that SWBT be directed to develop discrete pricing components for development of individual case basis charges. BroadSpan indicates that such discrete pricing components are necessary so that it can obtain predictable and prompt price quotes for such conditioning. The Commission agrees that SWBT should develop discrete pricing component charges consistent, in principle, with the charges authorized in this order. The Commission will not require SWBT to submit its pricing components to the Commission for review.

Shielded Loop Cross-Connect

The local loop that BroadSpan leases from SWBT for provision of ADSL service must be linked to the DSL Access Multiplexer tie cable at the Main Distribution Frame. SWBT and BroadSpan have agreed that when a non-shielded cross-connect is made, BroadSpan will be charged a non-recurring charge of \$19.96 for an initial connection and \$12.69 for additional connections. However, interference may require the use of shielded cable in some situations to assure quality service. SWBT proposes to charge \$115.30 for an initial shielded cross-connect and has not proposed a rate for an additional shielded cross-connect.

The evidence presented did not establish any appreciable difference in the amount of labor required to make a shielded or non-shielded cross-connect. The

difference in the cost of materials used to make the different connections is addressed in the recurring charges that BroadSpan will pay for the cross-connect. There is no reason for SWBT to charge a higher rate for a shielded cross-connect. SWBT will be directed to provide shielded cross-connect for the same non-recurring charge it applies to non-shielded cross-connect.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

1. Section 252(b)(1) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996, provides that “during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.”

2. BroadSpan is a carrier for purposes of Section 252 of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996.

3. SWBT is an incumbent local exchange carrier for purposes of Section 252 of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996.

4. BroadSpan’s arbitration petition was timely filed, more than 134 and less than 161 days after BroadSpan requested access to ADSL technologies as Unbundled Network Elements on September 22, 1998.

5. Section 252(b)(4)(C) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

[t]he State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

SWBT received BroadSpan’s request on September 22, 1998 and therefore the Commission must act to resolve this arbitration no later than June 22, 1999.

6. Section 252(c) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that “[I]n resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall . . . (2) establish any rates for interconnection services, or network elements according to subsection (d). . . .”

7. Section 252(d) of the Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996 provides that:

Determinations by a State Commission of the just and reasonable rate for . . . network elements for purposes of subsection (c)(3) of such section –

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the . . . network element . . . , and

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- (ii) nondiscriminatory, and
- (B) may include a reasonable profit.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company shall charge BroadSpan Communications, Inc. a non-recurring charge of \$15.00 per loop for loop qualification services.

2. That Southwestern Bell Telephone Company shall charge BroadSpan Communications, Inc. a non-recurring charge for loop conditioning on loops between 12,000 and 17,500 feet in length in the following amounts:

Removal of Repeater Option	\$289.51
Removal of Bridged Tap Option	\$484.19
Removal of Load Coil Option	\$797.78

3. That for loops beyond 17,500 feet in length, Southwestern Bell Telephone Company shall develop discrete pricing component charges consistent in principle with the charges authorized in this order.

4. That Southwestern Bell Telephone Company shall charge BroadSpan Communications, Inc. a non-recurring charge of \$19.96 for an initial shielded cross-connect and \$12.69 for additional shielded cross-connect.

5. That this order shall become effective on June 22, 1999.

Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994 Lumpe, Ch., dissents

**In the Matter of an Investigation Concerning the Primary Toll
Carrier Plan and IntraLATA Dialing Parity.***

Case No. TO-99-254, et al
Decided June 24, 1999

Telecommunications § 36, 39. The Commission granted some requests to clarify its Report and Order, and denied some requests. It allowed several local exchange companies to modify the notices they were ordered to provide to customers.

*See page 176 for another order in this case.

On August 10, 1999, this case was appealed to Cole County Circuit Court (CV1991082CC). On March 3, 2000, this case was appealed to the Western District Court of Appeals (WD58324).

ORDER REGARDING REQUESTS FOR CLARIFICATION AND MOTION TO
MODIFY CUSTOMER NOTICE

On June 18, 1999, the Small Telephone Company Group (STCG)¹ filed a Motion for Clarification and Application for Rehearing in each of Case Nos. TO-99-254, TO-99-497, TO-99-498, TO-99-499, TO-99-500, TO-99-501, TO-99-502, TO-99-503, TO-99-504, TO-99-505, TO-99-506, TO-99-507, TO-99-508, TO-99-509, TO-99-510, TO-99-511, TO-99-512, TO-99-513, TO-99-514, TO-99-515, TO-99-516, TO-99-517, TO-99-518, TO-99-519, TO-99-520, TO-99-521, TO-99-522, and TO-99-523. Although separate pleadings were filed in each of these cases, the text of each pleading is identical.

Also on June 18, 1999, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company filed an Application for Rehearing/Clarification in each of Case Nos. TO-99-524, TO-99-525, TO-99-526, TO-99-528, TO-99-529, TO-99-530, and TO-99-531, respectively, and Mid-Missouri Telephone Company filed an Application for Clarification in Case No. TO-99-527.

Also on June 18, 1999, AT&T Communications of the Southwest, Inc. (AT&T) filed an Application for Rehearing, Reconsideration and Clarification. That pleading bears a case style of "Case No. TO-99-254 et al." It is not entirely clear on which issues in which cases AT&T seeks rehearing², and on which issues in which cases AT&T seeks reconsideration and clarification.

On June 21, 1999, Alltel Missouri, Inc. (Alltel) filed an Additional Motion for Approval to Modify Customer Notice in Case No. TO-99-497.

On June 23, Southwestern Bell Telephone Company (SWBT) filed a Response to Request for Clarification in which it supports STCG's position on the issue concerning the list of all companies authorized to provide intraLATA toll service in Missouri.

¹For purposes of this proceeding, the Small Telephone Company Group consists of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

²In paragraphs 3, 4, and 6 of its pleading, AT&T alleges that the Commission erred or that its "order is unjust and unreasonable." One could infer that AT&T seeks rehearing, rather than reconsideration or clarification, of the issues mentioned in those paragraphs.

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In this order, the Commission will address the issues on which clarification is sought, and will address in separate orders the issues on which the parties seek rehearing.

STCG's Request for Clarification

A. Customer Notice Issues

STCG seeks clarification of various aspects of the customer notices its members were ordered to send to their customers. The Commission will address each of these aspects in the order in which they are raised in STCG's pleading.

1. The PTCs will no longer provide intraLATA toll service

STCG points out that some of the Reports and Orders approving intraLATA dialing parity (ILDP) plans are less clear than others that the Primary Toll Carrier (PTC) will no longer carry intraLATA toll calls after a certain date. Although the Reports and Orders in the cases of Local Exchange Carriers (LECs) with some types of ILDP plans make this point clearly, the Reports and Orders dealing with other types of plans are not as clear.

STCG suggests that the point can be made by adding the phrase "since [the PTC] will no longer provide this service after that date" to the end of the first sentence of the fourth paragraph of the notice. The Commission agrees and will grant STCG's request for clarification on this issue.

2. Assignment of customers to their interLATA Interexchange Carriers (IXCs)

STCG states that, in the notices in the Reports and Orders dealing with LEC plans that will assign customers to their interLATA IXCs, there is ambiguity about when this assignment will take place. Even though the Commission is not convinced that this ambiguity exists, the notice may be clearer with the modification STCG suggests. This modification is to change the third sentence in the second paragraph of the notice to read:

If you do not call [LEC] or a long distance company of your choice and choose a company to provide this service prior to [date], you will automatically be assigned to your current long distance (interLATA) company on that date if it appears on the attached list.

The Commission will grant STCG's request for clarification on this issue.

3. Direct customer contact with the long distance companies

STCG objects to language in the notices that directs customers to check with the LEC and the long distance company to find out whether long distance charges apply to certain calls (particularly to calls to internet service providers). STCG believes that this language would require its members to be familiar with the rates and services charged by IXCs. The Commission does not agree. All the language requires of a LEC is to be able to tell a customer whether a specific call will be a local call or a toll call. It is up to the customer to determine the rates charged by the customer's IXC if it is a toll call. The Commission will deny STCG's request for clarification on this issue.

4. List of all companies authorized to provide intraLATA toll service in Missouri

STCG objects to the requirement to provide, upon a customer's request, a list of all companies authorized to provide intraLATA toll service in Missouri. SWBT supports STCG's position on this issue. STCG believes that providing such a list will be burdensome, and will be of limited use (and perhaps even confusing) to customers. A list that was current at the time of hearing was provided to the STCG as Exhibit 77, and that list will be reasonably current through the initial selection process. It will not be an undue burden on the STCG members to provide this list to customers that request it. The Commission is aware that not all IXC's will provide intraLATA service in all exchanges because they may not have facilities available. Nonetheless, many customers may find the information useful. The Commission will deny STCG's request for clarification on this issue.

5. Customer selection list

STCG states that some of its members are considering formatting the list of intraLATA carriers in a way that would allow the customer to select a carrier from the list and return it to the LEC. This appears to be an efficient method for a LEC to determine a customer's choice, and the Commission will allow STCG members to use it if they choose.

6. LATA maps

STCG believes that its members should be permitted to include a LATA map and references to it in their notices. Inclusion of a LATA map and references to it could make the notices clearer, so the Commission will grant STCG's request for clarification on this issue.

7. Grand River and Lathrop modified notices

STCG states that the management of these two companies "is vigorously pursuing a plan to create an IXC affiliate," and hopes that the affiliate will be able to provide service by October 20, 1999. They request that they be allowed to send their customers modified notices (copies of which were attached to the pleading) to inform them of these plans. They intend to send second notices by October 1, 1999, and file these notices with the Commission. The Commission determines that this plan, and the notices, are reasonable and will clarify its Reports and Orders to allow them.

B. "Intercepts" on IntraLATA Toll Calls

STCG believes the Commission's direction to the PTCs to investigate and possibly implement intercepts contains inaccurate information because it proposes that the PTCs inform customers that they will no longer be able to complete certain calls as dialed after October 20, 1999³. STCG points out that, for LECs that

³ As STCG notes, the date in the Report and Order is October 22, 1999. This is in error; the correct date should be October 20, 1999.

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propose to assign customers that have not made a choice to the LECs' IXC affiliates, there is no possibility that customers will unknowingly be required to use 101XXXX dialing. STCG concedes that the use of intercepts may make sense to warn customers who would be defaulted to 101XXXX. It is to these customers that the Commission intended the intercepts be directed, and, to the extent the Report and Order was unclear, STCG's request to clarify this issue is granted.

C. Timing of ILDP Implementation and the PTC Plan's Elimination

1. Toll cut-off dates

STCG states that it interprets the Commission's Report and Order to mean that the PTC plan may be eliminated before October 20, 1999 and must be eliminated after October 20, 1999. This is the correct interpretation. In order to terminate the PTC plan on a toll cut-off date, the LECs should have some flexibility to terminate the PTC plan within the month prior to October 20, 1999. The LECs should also be allowed to substitute the actual date for the date the Commission included in the notices in the Reports and Orders. The Commission will grant STCG's request for clarification on this issue.

2. IAMO Telephone Company's ILDP Report and Order

STCG correctly notes that there is a sentence included at the end of footnote two in the Report and Order in Case No. TO-99-509 that should be stricken. The Commission will grant STCG's request for clarification on this issue.

3. Green Hills Telephone Corporation's ILDP Report and Order

STCG correctly notes that there is an error in Case No. TO-99-507 similar to the one noted in Case No. TO-99-509. The clause at the end of the last sentence in footnote two should be deleted. STCG also correctly notes that in the notice that is to be sent to customers there are two references to the date "August 13, 1999" that should be to "July 22, 1999." STCG states, once again correctly, that the second sentence in the last paragraph of the notice does not accurately describe Green Hills' ILDP plan and should be deleted. The Commission will grant STCG's request for clarification on this issue.

4. Cass County Telephone Company's ILDP Report and Order

STCG points out that references to July 22, 1999, in the Report and Order in Case No. TO-99-499 with respect to the timing of Cass County's rate case should be to October 2, 1999 in order to be consistent with the waiver the Commission granted Cass County. STCG is correct, and the Commission will grant STCG's request for clarification on this issue.

5. Craw-Kan Telephone Cooperative, Inc.'s ILDP Report and Order

Like Case No. TO-99-499, STCG points out that references to July 22, 1999, in the Report and Order in Case No. TO-99-501 with respect to the timing of Craw-Kan's rate case should be to October 20, 1999. STCG also notes that there is an error in footnote two in the Report and Order in Case No. TO-99-501 that is similar to the error in the same footnote in the Report and Order in Case No. TO-99-507. STCG is correct on

both of these points and the Commission will grant STCG's request for clarification on this issue.

D. Interest Rate for Refunds

STCG states that the interest rate of nine percent to be applied to refunds is only appropriate if the Commission's intent is to be punitive. STCG believes the rate should be more in line with the returns earned on low risk, short term investments.

The Commission's intent is not to be punitive. Since any money required to be refunded will be much like customer deposits (that is, it will be collected from entities which may not choose to "invest" in this manner, and may be held for a year or more), a rate of nine percent is not punitive. However, in order to be more consistent with recent cases in which the Commission has recognized that interest to be paid should more accurately reflect current market rates, the Commission will establish an interest rate which is equal to one percent above the prime lending rate as published in The Wall Street Journal on the next business day following the effective date of this order. The Commission will grant STCG's request for clarification on this issue.

E. Private Line Service

STCG implies that the Commission made a finding that the joint provisioning of private line is not part of the PTC contracts. The Commission actually found that private line existed before the PTC plan and can exist after it. The Commission, in its Report and Order in Case No. TO-99-254, simply indicated that it would not require these arrangements to be superceded by other arrangements, such as special access. The Commission will deny STCG's request for clarification on this issue. However, if STCG believes this issue needs to be addressed quickly, it can move to have it included in the scope of the issues to be addressed in Case No. TO-99-593.

F. Revenue Neutrality

STCG believes that there is a difference between the way the mechanism for achieving revenue neutrality is described in the various ILDP Reports and Orders and in the PTC plan Report and Order. STCG believes that the PTC plan Report and Order does not limit the amount of any refund in the same way that the ILDP Reports and Orders do. The Commission will clarify its intention that the amount of any refund will be limited to the amount recovered through the surcharge. The refund cannot under any circumstances be greater than the amount collected through the surcharge plus interest, and it could be less, or it could even be zero.

Alma Telephone Company's, Chariton Valley Telephone Corporation's, Choctaw Telephone Company's, Mid-Missouri Telephone Company's, MoKan Dial, Inc.'s, Modern Telecommunications Company's, Northeast Missouri Rural Telephone Company's, and Peace Valley Telephone Company's Requests for Clarification

These companies all filed requests for clarification of two points in the Reports and Orders approving their ILDP plans.

First, like the STCG, they request clarification concerning language in the notices that directs customers to check with the LEC and the long distance company to find out whether long distance charges apply to certain calls (particularly to calls to

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internet service providers). They believe that this language would require them to be familiar with the rates and services charged by IXC's. The Commission does not agree. All the language requires of a LEC is to be able to tell a customer whether a specific call will be a local call or a toll call. It is up to the customer to determine the rates charged by his IXC if it is a toll call. The Commission will deny the requests for clarification on this issue.

Second, these companies seek clarification of how a customer that has not chosen an intraLATA PIC will be treated. The Commission offers the following to clarify this point: For the transition period, the PTC will carry the traffic for customers that have not made an affirmative choice of a carrier. During this period, customers that have affirmatively decided to have no PIC will be treated as "no PIC" customers.

Chariton Valley Telephone Corporation's Request for Clarification

In addition to the two points noted above, Chariton Valley requests clarification of two points in the Report and Order in Case No. TO-99-525.

First, Chariton Valley seeks confirmation that the Commission approved a 180 PIC change charge waiver period. The waiver period is to be 180 days. This point was addressed in a Notice of Correction issued June 17, 1999.

Second, like the STCG, Chariton Valley notes that there is an error in footnote two in the Report and Order in Case No. TO-99-525 that is similar to the error in the same footnote in the Report and Order in Case No. TO-99-507. Chariton Valley is correct that the August 13 date in that footnote does not apply to it; the Commission intended to approve its proposal to assign to its IXC affiliate all customers that have not made another choice by July 22, 1999. The Commission will grant Chariton Valley's request for clarification on this issue.

AT&T's Request for Clarification

AT&T seeks clarification of two points. First, it seeks clarification of the PIC change charge waiver period the Commission approved for SWBT in Case No. TO-99-535. The waiver period is to be six months. This point was addressed in a Notice of Correction issued June 17, 1999, and in a Second Notice of Correction issued June 23, 1999.

Second, AT&T seeks clarification regarding the notice SWBT is to send to its customers. AT&T believes that SWBT should be required to include in its notice a list of carriers that are willing to provide intraLATA toll service in SWBT's territory. As AT&T's position in these cases has made abundantly clear, SWBT's territory is the most desirable portion of the state, and virtually all carriers will want to serve customers there. The notice allows customers to request a list of all carriers authorized to provide service in Missouri, which will be sufficient to inform customers of their choices. The Commission will deny AT&T's request for clarification on this issue.

Alltel's Additional Motion for Approval to Modify Customer Notice

On June 21, 1999, Alltel Missouri, Inc. (Alltel) filed an Additional Motion for Approval to Modify Customer Notice in Case No. TO-99-497. Alltel seeks approval

to slightly vary the text of the notice from that contained in the Report and Order. The Commission finds that the notice proposed by Alltel in its June 21 pleading is reasonable. The notice still conveys most of the important information that needs to be in the notice. However, the Commission will order Alltel to include the following text:

You can contact your local Alltel Missouri, Inc. business office for a list of all companies authorized to provide intraLATA toll service in Missouri. If your current long distance (interLATA) company is not on the attached list, and you want it to carry your intraLATA calls in addition to the long distance calls it now carries, you should contact it.

With this addition, the Commission will approve Alltel's proposed notice.

IT IS THEREFORE ORDERED:

1. That the requests for clarification filed by the Small Telephone Company Group in Case Nos. TO-99-254, TO-99-497, TO-99-498, TO-99-499, TO-99-500, TO-99-501, TO-99-502, TO-99-503, TO-99-504, TO-99-505, TO-99-506, TO-99-507, TO-99-508, TO-99-509, TO-99-510, TO-99-511, TO-99-512, TO-99-513, TO-99-514, TO-99-515, TO-99-516, TO-99-517, TO-99-518, TO-99-519, TO-99-520, TO-99-521, TO-99-522, and TO-99-523 on June 18, 1999, are granted in part and denied in part as discussed herein.

2. That the requests for clarification filed by Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company in Case Nos. TO-99-524, TO-99-525, TO-99-526, TO-99-527, TO-99-528, TO-99-529, TO-99-530, and TO-99-531 on June 18, 1999, are granted in part and denied in part as discussed herein.

3. That the request for clarification filed by AT&T Communications of the Southwest, Inc. on June 18, 1999, is granted in part and denied in part as discussed herein.

4. That the Additional Motion for Approval to Modify Customer Notice filed by Alltel Missouri, Inc. in Case No. TO-99-497 on June 21, 1999, is granted as discussed herein.

5. That this order shall become effective on July 7, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent
Mills, Deputy Chief Regulatory Law Judge

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House of Denmark, Inc., Complainant, v. St. Louis County Water Company, Respondent.

Case No. WC-99-297

Decided July 1, 1999

Water §30. Commission approved agreement of the parties in case in which water service customer had improperly installed a second meter in company's meter box and customer agreed to remove the second meter.

ORDER APPROVING STIPULATION AND AGREEMENT, GRANTING VARIANCE AND CLOSING CASE

This matter arises out of a complaint filed against St. Louis County Water Company (STLCWC) by one of its commercial customers, House of Denmark, Inc. (Denmark). Denmark filed its complaint on January 7, 1999, seeking a variance from a rule of STLCWC with respect to an additional water meter and irrigation system connection, allegedly installed in STLCWC's meter box at Denmark's premises in violation of STLCWC's rule. On January 25, 1999, STLCWC timely filed its answer. After an attempt to pursue mediation, the Commission on May 20, 1999, denied the parties' request to appoint a settlement officer, set a prehearing conference and ordered the filing of a joint proposed procedural schedule.

On June 25, 1999, the parties appeared by counsel and the prehearing conference was held. Thereafter, on the same day, the parties filed their Stipulation and Agreement, on the basis of the Staff Memorandum filed on June 21, 1999. The parties request that the Commission find the facts as stipulated and approve the resolution agreed by the parties. The agreed resolution is one of several options outlined in the Staff Memorandum.

The parties have stipulated to the facts set out in the Staff Memorandum. Briefly, they are as follows: Denmark buys water from STLCWC and buys sewer services from the Metropolitan St. Louis Sewer District (MSD). Some of the water that Denmark buys from STLCWC is used by Denmark to water its lawn via a buried sprinkler system. MSD bills Denmark for sewer services based on the volume of water that Denmark buys from STLCWC, less whatever water Denmark uses in its lawn sprinkler system. Therefore, there is a second meter installed in the meter box at Denmark's premises to measure the volume of water diverted into the lawn sprinkler system. It is this meter that STLCWC claims is in violation of its Commission-approved rules.

At one time, STLCWC's rules permitted the location of "extra plumbing appurtenances" in meter boxes with the prior approval of the company. However, there is no evidence as to whether or not such approval was ever obtained in this case. In any event, the parties have agreed to resolve the matter by locating the MSD meter

in a new meter box, connected through the existing box to the incoming main. A variance is necessary to permit this connection and, upon consideration of all of the circumstances, the Commission believes it should be granted.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties is approved.
2. That House of Denmark, Inc., shall have sixty days from the effective date of this order to remove or relocate the additional water meter and other extra plumbing appurtenances from the St. Louis County Water Company meter box on its premises.
3. That a variance is granted to House of Denmark, Inc., to install and maintain a service line connection, piping, and a valve in the St. Louis County Water Company meter box on its premises, for purposes of connecting to the relocated Metropolitan St. Louis Sewer District meter. House of Denmark shall install a backflow prevention device as specified in Paragraph 3 on Page 5 of the Staff Memorandum filed herein.
4. That this order shall become effective on July 13, 1999.
5. That this case may be closed on July 14, 1999.

Lumpe, Ch., Crumpton, Schemenauer, and Drainer, CC., concur
Murray, C., absent

Thompson, Deputy Chief Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Investigation of the Regulatory Treatment of
Missouri Gas Energy's Gas Costs.**

Case No. GO-99-591

Decided July 1, 1999

Gas §17.2. The Commission rejected a tariff that would have extended a gas company's Experimental Gas Cost Incentive Mechanism for four months while negotiations continued for a possible renewal of the mechanism.

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ORDER DENYING REQUEST OF MISSOURI GAS ENERGY
TO EXTEND EXPERIMENTAL GAS COST INCENTIVE MECHANISM, DENY-
ING MOTION FOR APPROVAL OF TARIFF SHEET ON LESS THAN THIRTY
DAYS NOTICE, DENYING APPLICATION
FOR INTERVENTION AND REJECTING TARIFF

On June 9, 1999, Missouri Gas Energy (MGE) filed a pleading entitled *Request of Missouri Gas Energy to Extend Experimental Gas Cost Incentive Mechanism and Motion for Approval of Tariff Sheet on Less Than Thirty Days Notice*. On the same date MGE also filed a proposed tariff that was assigned tariff number 9900959. The request asks that the Commission approve the extension of the Experimental Gas Cost Incentive Mechanism (EGCIM) that was approved in Case No. GO-94-318. The proposed tariff would put such an extension into effect. The EGCIM is scheduled to expire by its terms on June 30, 1999. MGE proposes that it be extended until October 31, 1999.

MGE's request indicates that it has been involved in negotiations with the Staff of the Commission (Staff) and with the Office of the Public Counsel (Public Counsel) regarding possible revisions to the EGCIM. MGE represents that these negotiations are ongoing but are unlikely to be completed before June 30. MGE requests that the EGCIM be extended to allow more time for negotiations without requiring MGE to revert to the traditional purchased gas adjustment (PGA) mechanism until a new EGCIM can be negotiated.

On June 16, Public Counsel filed its response to MGE's request and accompanying tariff. Public Counsel opposes MGE's request for an extension of the EGCIM and urges the Commission to either reject MGE's proposed tariff or to suspend the tariff, order MGE to file its proposed new EGCIM and order a reasonable procedural schedule. Staff filed its suggestions in opposition to MGE's request on June 21. Staff also suggests that the Commission reject MGE's proposed tariff.

On June 23, Kansas Pipeline Company (KCP), a supplier of natural gas transportation service to MGE, filed an Application for Intervention. The application indicates that KCP is concerned about the regulatory treatment afforded to MGE's purchase of natural gas.

The Commission has considered MGE's request to extend the existing EGCIM by four months. The Commission has also considered the opposition to such an extension expressed by Public Counsel and Staff. The Commission is not willing to extend the EGCIM over the objection of Public Counsel and Staff. The Commission orders MGE to submit a proposed new EGCIM and establish a procedural schedule for its consideration. Suspension or rejection of the proposed tariff would have the same effect, the EGCIM would not remain in effect after its expiration on June 30. The Commission concludes that MGE's request and accompanying tariff should be rejected. This decision will not preclude MGE from developing and presenting a proposed new EGCIM when it is prepared to do so. When such a proposal is

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presented to the Commission it will be given due consideration.

IT IS THEREFORE ORDERED:

1. That the Request of Missouri Gas Energy to Extend Experimental Gas Cost Incentive Mechanism is denied.
2. That Missouri Gas Energy's Motion for Approval of Tariff Sheet on Less than Thirty Days Notice is denied.
3. That the tariff submitted by Missouri Gas Energy and assigned tariff number 9900959 and denominated as:

P.S.C. MO. No. 1, Third Revised, Sheet No. 24.2

Canceling P.S.C. MO. No. 1, Second Revised, Sheet No. 24.2 is rejected.

4. That the Application for Intervention filed by Kansas Pipeline Company is denied.
5. That this order shall become effective on July 13, 1999.

Lumpe, Ch., Crumpton, Schemenauer, and Drainer, CC., concur
Murray, C., absent

Woodruff, Regulatory Law Judge

**Director of the Division of Manufactured Homes, Recreational
Vehicles and Modular Units of the Public Service Commission,
Complainant, v. Lake Area Development Co. Inc. DBA Factory
Direct Manufactured Housing, Respondent.**

Case No. MC-99-221

Decided July 6, 1999

Manufactured Housing §§2, 19. The Commission approved the agreement which stated that: (1) Factory had received the inspection reports of the Director for the home referred to in the complaint; (2) the complaint concerned a manufactured home purchased from Factory by Fergusons; (3) the Director had found various deficiencies in the setup of the Fergusons' home; (4) Factory had responded to and had made attempts to satisfy the items set forth in the complaint; (5) Fergusons had refused to allow Factory to make any further repairs to the home; (6) Factory's dealer registrations would be placed on probation for 90 days, beginning on the date the Commission approves the Agreement; (7) during the probationary period, if Factory violated any of the rules, regulations, or laws pertaining to the sale or setup of manufactured homes, the Director would have the option to file a formal complaint for violation of the order approving the Agreement; (8) such complaint would be in addition to a complaint filed against Factory for the alleged offense which caused the probation violation.

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ORDER APPROVING STIPULATION AND AGREEMENT

Procedural History

On November 17, 1998, the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission of the State of Missouri (Director) filed a complaint against Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing (Factory) for failure to properly set up a manufactured home and to correct code violations in a manufactured home as required by Section 700.100.3(6), RSMo 1994¹.

Factory filed an answer on December 23, 1998, and moved to dismiss the complaint. On December 30, 1998, the Director filed a response to Factory's motion to dismiss. On June 17, 1999, this motion was denied.

A prehearing conference was held on February 2, 1999. As a result of discussions during and after the prehearing conference, the Director and Factory filed their proposed *Stipulation and Agreement* (Agreement) on June 9, 1999.

The Agreement stated that, *inter alia*, if requested by the Commission, the Director should have the right to submit to the Commission a memorandum explaining its rationale for entering into the Agreement. The Agreement also stated that each party should be served with a copy of the memorandum and should have the right to submit to the Commission a responsive memorandum served on all parties within five (5) business days of the service of the Director's memorandum. The Commission requested a memorandum from the Director. On June 16, 1999, the Director filed his *Suggestions in Support of the Stipulation and Agreement*. Factory did not respond.

Discussion

The Agreement stated that Factory and Director had reached a mutual resolution of the complaint brought against Factory by the Director. Factory acknowledged that it had received the inspection reports of the Director for the home referred to in the complaint; the complaint concerned a manufactured home purchased from Factory by David Ferguson and Patti Ferguson (Fergusons). Factory further acknowledged that the Director had found various deficiencies in the setup of the Fergusons' home². Factory stated that it had responded to and had made attempts to satisfy the items set forth in the complaint. Factory also stated that David Ferguson had refused to allow Factory to make any further repairs to the home.

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

² The Fergusons also alleged a host of other deficiencies which are not covered by this case. Only the setup deficiencies alleged by the Director are covered herein.

The Agreement also stated that Factory's dealer registrations would be placed on probation for ninety (90) days, beginning on the date the Commission approves the Agreement. During the probationary period, the Agreement stated that if Factory violated any of the rules, regulations, or laws pertaining to the sale or setup of manufactured homes, the Director would have the option to file a formal complaint for violation of this order approving the Agreement. The Agreement also stated that such complaint would be in addition to a complaint filed against Factory for the alleged offense which caused the probation violation.

The Agreement also stated that in the event the Commission issued an order approving the Agreement, the parties would waive their respective rights to: (a) call, examine, or cross-examine witnesses, pursuant to Section 536.070(2); (b) present oral argument and written briefs, pursuant to Section 536.080.2; (c) have the transcript read by the Commission pursuant to Section 536.080.2; (d) seek rehearing or reconsideration pursuant to Section 386.410, RSMo Supp. 1998; and (e) seek judicial review pursuant to Section 386.510. The Agreement stated that the waiver did not apply to any other matter brought before the Commission.

The Agreement stated that the signing of the Agreement by Factory did not constitute an admission on the part of Factory that the items contained in the inspection reports constitute improper setup of a manufactured home.

Finally, the Agreement concluded with an agreement by the Director to file a motion to dismiss with prejudice the complaint filed against Factory. The Agreement stated that this motion would be filed within one (1) week after the Commission approves the Agreement. Factory stated that it agreed to the dismissal pursuant to 4CSR240-2.116.

Findings of Fact

The Missouri Public Service Commission has arrived at the following findings of fact:

Factory is a dealer of manufactured homes and currently operates lots for the sale of manufactured homes in the Missouri towns of Eldon, Laurie, Sedalia, and St. Robert.

On June 30, 1995, David Ferguson and Patti Ferguson purchased a new 1995 Skyline Sabre manufactured home, Serial Number 42-51-1890-H (Fergusons' home) from Factory. No valid waiver of any setup responsibilities was received from the Fergusons by Factory as part of the purchase agreement. On June 13, 1996, Fergusons filed a consumer complaint with the Director. Following the receipt of the Ferguson complaint, the Fergusons' home was inspected on several occasions, apparently by Factory³. On June 8, 1998, and August 14, 1998,

³The pleadings are silent on the point of who actually conducted the first inspections of the Fergusons' home.

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additional inspections of the Fergusons' home were conducted by Gene Winn (Winn), an authorized inspector employed by the Commission. As a result of his inspections, Winn prepared two field inspection reports citing a number of deficiencies, including setup deficiencies, in the Fergusons' home that did not comply with the required code. Both reports, as well as other documents referred to hereinafter, were attached to the complaint: the field inspection report dated June 8, 1998 as Exhibit A, and the field inspection report dated August 14, 1998 as Exhibit B⁴.

On June 17, 1998, the Director sent a letter to Factory, enclosing a copy of Exhibit A, directing that the setup deficiencies enumerated be corrected within thirty (30) days (Exhibit C). On August 17, 1998, the Director sent a letter to Factory, enclosing a copy of Exhibit B, directing that the setup deficiencies enumerated be corrected within thirty (30) days (Exhibit D). On September 17, 1998, the Director sent a letter to Factory directing Factory to forward work orders, signed by the Fergusons, indicating that the setup deficiencies noted in the inspections were corrected (Exhibit E). The work orders were to be forwarded within fifteen (15) days from the receipt of the letter.

On November 5, 1998, Winn again inspected the Fergusons' home. As a result of that inspection, Winn prepared a third field inspection report (Exhibit F), confirming the failure of Factory to comply with the Director's requirements and noting that additional setup deficiencies were created as a result of Factory's attempted repairs⁵.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over manufactured homes and manufactured home dealers pursuant to Chapter 700, as amended, of the Revised Statutes of Missouri (Chapter 700). As prescribed by 4 CSR 240-120.031, the Commission has delegated its powers pertaining to new manufactured homes under Chapter 700 to the Director, except the powers to revoke, deny, refuse to renew, or place on probation a registration under Section 700.090.

⁴ Exhibit A listed, *inter alia*, items of improper setup: (a) there is no vapor barrier under the home; (b) the front door piers are single stacked instead of double stacked; (c) the home needs some re-leveling; and (d) the electric wire used on the home is for 100 amp service but, since it was a total electric home, it needed wiring for 200 amp service, plus there was no ground wire. Exhibit B listed, *inter alia*, items of improper setup: (a) all of those listed in Exhibit A (except any reference to a ground wire); (b) the I-beam on the front door side was bent; and (c) the home is not properly anchored. (It should be noted that Factory, in its *Consolidated Answer, Affirmative Defenses and Motions to Dismiss* filed on December 23, 1998, stated that "The complaints of David and Patti Ferguson were and are trivial in nature and the conditions complained of are endemic to purchasers of the quality of manufactured home acquired by the Fergusons.")

⁵ Seventeen new setup deficiencies were listed in Exhibit F, *q.v.*

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Factory is currently registered with the Commission as a dealer for 1998 under dealer registration numbers 8765, 9161, 9115, and 9184, and is subject to the jurisdiction of the Commission.

Section 700.100(2) states:

The commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if proven, shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation.

Section 700.100.3(6) states:

[The following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration:] . . . As a dealer, failing to arrange for the proper initial setup of any new or used manufactured home or modular unit sold from or in the state of Missouri, unless the dealer receives a written waiver of that service from the purchaser or his authorized agent and an amount equal to the actual cost of the setup is deducted from the total cost of the manufactured home or modular unit[.]

There is no need for a hearing. The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests a hearing, the Commission may determine that a hearing is not necessary and that the Commission may make a decision based on the Agreement. See *State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in a case, pursuant to Section 536.060, RSMo Supp. 1998.

Decision

With one exception, the Commission has decided to approve all the terms of the Agreement as being in the best interests of the parties and achieving an equitable resolution of all the issues. Paragraph 6 of the Agreement states that the Factory will be placed on ninety (90) day probation, the probationary period beginning on the date that the Commission approves the Agreement. Paragraph 12 of the Agreement states that the Director will dismiss the case "with prejudice" within one (1) week after the Commission approves the Agreement. These two paragraphs are obviously contradictory: If the Commission allows the dismissal with prejudice, then there will be no case in which Factory is on probation. However, the Commission desires that Factory

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be put on probation. Thus, the Commission will not approve Paragraph 12 of the Agreement.

IT IS THEREFORE ORDERED:

1. That, except for Paragraph 12 thereof, the Missouri Public Service Commission approves the *Stipulation and Agreement* between the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission of the State of Missouri and Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing, signed and filed on June 9, 1999.

2. That Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing shall be placed on ninety (90) day probation beginning on the effective date of this order, with the condition that it comply with any and all of the statutes, rules and regulations pertaining to the sale or setup of manufactured homes.

3. That the Director of the Division of Manufactured Homes, Recreational Vehicles and Modular Units of the Public Service Commission of the State of Missouri shall report to the Missouri Public Service Commission at the end of the probationary period set forth above, said report stating whether or not Lake Area Development Company, Inc. d/b/a Factory Direct Manufactured Housing has complied with the condition of its probation. If the said report does not indicate a probation violation, this case may be closed.

4. That this order shall become effective on July 16, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent

Hopkins, Senior Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**Staff of the Missouri Public Service Commission, Complainant,
v. House Springs Sewer Company, Respondent.**

Case No. SC-99-135

Decided July 6, 1999

Evidence, Practice & Procedure §8. The Commission approved an agreement stipulating that: (1) the Commission issued an order in Case No. SM-99-287 authorizing the sale of Imperial Utility Corporation's sewer assets to Rock Creek Public Sewer District; (2) Imperial and House Springs are owned and operated by the same entity, *viz.*, EPCO, Incorporated; (3) Imperial, House Springs, and EPCO are all currently under receivership in the Circuit Court of Saint Louis County, Missouri; (4) the Commission conditioned the distribution of the net proceeds of the Imperial sale on the payment of the assessments owed by Imperial and House Springs; and (5) the parties to the Imperial sale anticipated the closing of the sale "within a couple of weeks" (of May 10, 1999), although the final distribution of the sale proceeds to the owners of Imperial was not anticipated in the near future; (7) House Springs admitted that it owed assessments to the Commission in the amount of \$41,093.52; (8) in the event of the sale of House Springs' assets, House Springs would provide, through an escrow agreement, for the payment of all assessments owed the Commission; (9) House Springs agreed that it would pay the said assessments immediately upon the closing of the House Springs' assets sale or at such time as the net proceeds of the Imperial sale are distributed to the owners of Imperial, whichever occurs first; and (10) Staff agreed to file a motion to dismiss with prejudice the complaint within one week after the full payment of the assessments owed by House Springs is received by the Commission.

ORDER APPROVING STIPULATION AND AGREEMENT

Procedural History

On October 2, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a complaint against House Springs Sewer Company (House Springs) for failure to pay its annual assessments to the Missouri Public Service Commission (Commission) for the fiscal years 1997, 1998, and 1999, in violation of Section 386.370, RSMo Supp. 1998¹.

House Springs filed an answer on December 21, 1998. Although a prehearing conference was never held, the Staff and House Springs filed their proposed *Stipulation and Agreement* (Agreement) on May 10, 1999.

The Agreement stated, *inter alia*, that if requested by the Commission, the Staff had the right to submit a memorandum explaining its rationale for entering into the Agreement. The Agreement also stated that each party should be served with a copy of the memorandum and had the right to submit a responsive memorandum served on all the parties within five (5) business days of the service of the Staff's memorandum. On May 28, 1999, the Commission requested a memorandum from the Staff. On June 16, 1999, the Staff submitted its *Memorandum* which served as its suggestions in support of the stipulation and agreement. House Springs did not respond.

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

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Discussion

The Agreement stated that, as a result of discussions, House Springs and Staff had reached an agreement to resolve Staff's complaint against House Springs.

The Agreement stated that the Commission issued an order in Case No. SM-99-287 on April 22, 1999, which authorized the sale of Imperial Utility Corporation's (Imperial) sewer assets to Rock Creek Public Sewer District. The Agreement stated that Imperial and House Springs are owned and operated by the same entity, *viz.*, EPCO, Incorporated (EPCO), a Missouri corporation. The Agreement stated that Imperial, House Springs, and EPCO are all currently under receivership in the Circuit Court of Saint Louis County, Missouri, with Patricia Fribis acting as receiver for all three companies. The Agreement stated that the Commission conditioned the distribution of the net proceeds of the Imperial sale on the payment of the assessments owed by Imperial and House Springs. The Agreement stated that the parties to the Imperial sale anticipated the closing of the sale "within a couple of weeks" (of May 10, 1999)², although the final distribution of the sale proceeds to the owners of Imperial was not anticipated in the near future.

In the Agreement, House Springs admitted that it owed assessments to the Commission in the amount of \$41,093.52, and that, in the event of the sale of House Springs' assets, House Springs would provide, through an escrow agreement, for the payment of all assessments owed the Commission. The Agreement provided that House Springs agreed that it would pay the said assessments immediately upon the closing of the House Springs' assets sale or at such time as the net proceeds of the Imperial sale are distributed to the owners of Imperial, whichever occurs first. Staff agreed to file a motion to dismiss with prejudice the complaint within one (1) week after the full payment of the assessments owed by House Springs is received by the Commission.

The Agreement also stated that in the event the Commission issued an order approving the Agreement, the parties would waive their respective rights in the present case to: (a) call, examine, or cross-examine witnesses, pursuant to Section 536.070(2); (b) present oral argument and written briefs, pursuant to Section 536.080.1; (c) have the transcript read by the Commission pursuant to Section 536.080.2; (d) seek rehearing or reconsideration pursuant to Sections 386.410, RSMo Supp. 1998, and 386.500³; and (e) seek judicial review pursuant to Section 386.510.

Findings of Fact

The Missouri Public Service Commission has arrived at the following findings of fact:

² The report of this sale was filed May 24, 1999.

³ The Agreement did not cite these sections but instead cited Section 386.510, which was a scrivener's error.

House Springs is a Missouri corporation doing business as a public utility operating a sewer system in the City of Arnold, County of Jefferson, State of Missouri. EPCO holds sole control of House Springs.

The Commission is obligated to render a statement of assessment to each public utility on or before July 1 and the amount so assessed to each such public utility shall be paid by it to the Director of Revenue in full on or before July 15 next following the rendition of such statement, except that any such public utility may at its election pay such assessment in four equal installments, pursuant to Section 386.370.3, RSMo Supp. 1998.

For fiscal year 1997, the assessment for House Springs was set at \$11,632.13. As of the date of the complaint, House Springs had only paid a total of \$5,816.07 on its fiscal year 1997 assessment, leaving an unpaid balance of \$5,816.06. For fiscal year 1998, the assessment for House Springs was set at \$12,490.69. As of the date of the complaint, House Springs had paid nothing on its fiscal year 1998 assessment, leaving an unpaid balance of \$12,490.69. For fiscal year 1999, the assessment for House Springs was set at \$27,468.51. As of the date of the complaint, House Springs had paid nothing on its fiscal year 1999 assessment, leaving an unpaid balance of \$27,468.51. The total amount at issue, subsequent to a recalculation by the Staff of the fiscal year 1999 assessment, is \$41,093.52. The Commission served proper notice upon House Springs of its fiscal year assessments for each of the fiscal years 1997, 1998, and 1999.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over public utilities operating sewer systems, pursuant to Sections 386.020(42), (49), and 386.250(4), RSMo Supp. 1998. The Commission is vested with the general power and authority to estimate the expenses to be incurred by it during each fiscal year reasonably attributable to the regulation of public utility. In addition, the Commission is also vested with the specific power and authority to separately estimate and allocate the amount of expenses directly attributable to the regulation of, *inter alia*, sewer corporations. Section 386.370.1, RSMo Supp. 1998.

There is no need for a hearing. The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no party requests a hearing, the Commission may determine that a hearing is not necessary and that the Commission may make a decision based on the Agreement. See *State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement. The Commission has the legal authority to accept a stipulation and agreement as offered

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by the parties as a resolution of issues raised in a case, pursuant to Section 536.060, RSMo Supp. 1998.

Decision

The Commission has decided to approve all the terms of the Agreement as being in the best interests of the parties and achieving an equitable resolution of all the issues.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission approves the *Stipulation and Agreement* between the Staff of the Public Service Commission of the State of Missouri and House Springs Sewer Company, signed and filed on May 10, 1999.

2. That, in the event of the sale of the assets of House Springs Sewer Company, the company provide, through an escrow agreement, for the payment of all assessments owed to the Missouri Public Service Commission. Further, that House Springs Sewer Company pay the said assessments immediately upon the closing of such sale, or at such time as the net proceeds of the sale of Imperial Utility Corporation's assets to Rock Creek Public Sewer District are distributed to the owners, whichever occurs first.

3. That the Staff of the Missouri Public Service Commission shall file a motion to dismiss with prejudice the complaint against House Springs Sewer Company within one (1) week after the full payment of the assessments owed by House Springs Sewer Company is received by the Missouri Public Service Commission.

4. That this case shall stay open until the provisions of paragraphs two (2) and three (3) as set forth immediately above are fulfilled.

5. That this order shall become effective on July 16, 1999.

Lumpe, Ch., Murray, Schemenauer and Drainer, CC., concur
Crumpton, C., absent
Hopkins, Senior Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of Tariff Sheets Filed by Missouri Public Service, a
Division of UtiliCorp United Inc. to Modify its Tariff File No.
9900181 Electric Line Extension Rule.**

Case No. ET-99-126
Decided July 15, 1999

Electric §32. The Commission found that safety would not be affected by approval of a tariff that would allow independent contractors rather than utility employees to do trenching work for new electric lines.

REPORT AND ORDER

BACKGROUND

On September 1, 1998, Missouri Public Service, a Division of UtiliCorp United Inc. (MPS) submitted tariffs proposing to modify its electric line extension rules. The tariffs bore an effective date of October 1, 1998. On September 30, the Commission suspended the tariff until July 29, 1999, provided notice, and set an intervention deadline. By order dated December 9, 1998, the Commission granted intervention to Kansas City Power & Light Company (KCPL) and the International Brotherhood Of Electrical Workers, Local Union No. 814 (Local 814). Pursuant to a schedule established by the Commission, testimony and a hearing memorandum were filed, an evidentiary hearing held, and briefs submitted.

The only issue presented to the Commission for decision is whether it should approve MPS's proposed line extension tariffs. Both MPS and the Staff of the Commission argue that it should, and Local 814 argues that it should not¹.

At the hearing, the Commission reserved Exhibit Numbers 12 and 13 for two late-filed exhibits. Exhibit 12 consisted of cost calculations related to the ten customers referred to in the testimony of MPS witness Vancas, and Exhibit 13 consisted of a diagram Mr. Vancas drew during the course of the hearing. No objections were made to either of these exhibits, and they will be admitted.

FINDINGS OF FACT

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties. Some evidence and positions of parties on the issue may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

¹ Neither KCPL nor the Office of the Public Counsel took a position on the issue in this case.

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Local 814 objects to the tariffs on the basis of job protection and safety concerns. Local 814 believes that the new line extension policy would remove much of the work of installing services to new customers from MPS crews and give it to outside contractors. Local 814 believes that this shift will result, at least in the long run, in its members having less work to do.

Local 814 also believes that having non-MPS crews do parts of the installation of new services will result in an increase in mistakes and in poor installations, which will lead to increased hazards both to MPS crews and the general public. Local 814's witness testified to three specific mistakes that non-MPS crews have made, and also testified that sometimes non-MPS crews install electric, gas, water and phone lines in the same ditch.

MPS testified that its proposed tariff will ensure that those responsible for causing new costs bear those costs. It admitted that non-MPS crews have made mistakes in installing services, but stated that MPS crews make mistakes too. MPS believes that, because under its proposed policy MPS crews will do all the electrical work and non-MPS crews will simply place conduit and install bases for meters, safety will not be compromised. MPS also testified that it does not plan to reduce the number of workers that it currently has on the payroll if its tariffs are approved.

The Staff agreed with MPS that safety would not be compromised under the proposed tariffs. The Staff also noted that, if the tariff was approved, MPS's line extension would be more consistent in terms of policy with those of the other regulated electric utilities in Missouri.

The Commission appreciates Local 814's concerns about the potential for loss of jobs and the possibility of an increase in hazardous conditions. The Commission, however, is satisfied that the proposed tariffs are not intended to, and in fact will not, cause a loss of jobs or an increase in hazardous conditions. In his sworn testimony at the evidentiary hearing, MPS witness Vancas stated that MPS does not plan to reduce the number of electrical employees that it currently has on the payroll as a result of this tariff filing. The Commission is also satisfied that there will not be any increased risks to Local 814 workers or the general public as a result of the tariff changes. Non-MPS crews will not be laying any cable; MPS crews will install the line, connect it, and energize it. Furthermore, Local 814's witness testified that both MPS and non-MPS crews make mistakes that can impact safety.

The Commission finds that approving MPS's proposed line extension tariffs is in the public interest. The new policy will more closely assess costs to those who cause them than the current policy. Furthermore, it will do so without compromising the safety of workers or the general public, and without a reduction of MPS's work force.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law.

UtiliCorp United Inc. d/b/a Missouri Public Service is a public utility engaged in the provision of electric service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

IT IS THEREFORE ORDERED:

1. That the tariffs filed by Missouri Public Service, a Division of UtiliCorp United Inc. (MPS) on September 1, 1998, and assigned tariff number 9900181, are approved for service on and after July 29, 1999.
2. That late-filed Exhibits 12 and 13 are admitted.
3. That all motions not previously ruled upon by the Commission in this case are hereby denied and all objections not previously ruled upon are hereby overruled.
4. That this order shall become effective on July 29, 1999.

Lumpe, Ch., Murray and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Crumpton and Schemenauer, CC, absent

Mills, Deputy Chief Regulatory Law Judge

**In the Matter of the Application of Southern Union Company for
Authority to Acquire up to and Including Five Percent (5%) of
the Common Stock of Pennsylvania Enterprises, Inc.***

Case No. GM-2000-49

Decided July 29, 1999

Gas §6. The Commission approved an application from a gas company to immediately acquire up to five percent of the outstanding common stock of an out-of-state gas company in anticipation of a pending merger, but only with certain conditions, requested by the Staff of the Commission, designed to protect the company's Missouri ratepayers.

ORDER APPROVING APPLICATION WITH ADDITIONAL CONDITIONS

On July 20, 1999, Southern Union Company (Southern Union) filed an application with the Commission requesting authority to acquire up to and including five percent of the common stock of Pennsylvania Enterprises, Inc. (PNT). In a companion case, case number GM-2000-43, Southern Union has requested authority to complete a merger with PNT. Southern Union wishes to immediately purchase a portion of the stock of PNT for the purpose of mitigating the pricing effect of possible arbitrage trading in PNT shares prior to the time of closing of the merger. Along with

*See page 300 for another order in this case.

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its Application, Southern Union filed a motion requesting expedited consideration of this application to permit the proposed transactions to occur no later than July 31. Southern Union requested that the Commission issue its order approving its application no later than July 30, bearing an effective date of the date of issuance.

On July 29, the Commission's Staff filed a recommendation regarding the application of Southern Union. Staff recommends that the Commission reject the application as submitted. Staff indicates that its review of the Application and discussions with Southern Union representatives indicate that, as filed, the Application does not provide sufficient specific undertakings by Southern Union to ensure that the investments authorized by this order is not detrimental to the public interest in Missouri. Staff indicates that in rate case proceedings, Southern Union has consistently taken the position that its capital structure is highly leveraged and because of this its shareholders deserve a risk premium on return on equity. The Application indicates that Southern Union intends to borrow even more money for this request, which will increase its leverage and exacerbate the risk premium argument.

Staff further states that in its Application Southern Union shows a pro forma financial scenario. This scenario shows Southern Union losing money because it is borrowing \$12 million at 5.5%, yet only earning 3.97% on its investment. Furthermore, Southern Union fails to show a scenario in which its offer does not result in a business combination with PNT. If the business combination between Southern Union and PNT does not occur, the stock price could retreat and Southern Union would be forced to liquidate its position at a loss. Southern Union's failure to recognize the negative consequences of this scenario also results in a failure to take precautions to ensure that this action is not detrimental to the public interest in Missouri.

While Staff recommends rejection of the Application, it also states that if the Commission does approve the Application it do so only on certain conditions. The Commission recognizes the concerns expressed in Staff's recommendation. However, the Commission is not willing to reject the Application on the basis of those concerns. The Commission will approve the Application but only with the additional conditions recommended by Staff and set forth in this order.

IT IS THEREFORE ORDERED:

1. That the Application filed by Southern Union Company for authority to acquire up to five percent (5%) of the outstanding common stock of Pennsylvania Enterprises, Inc. prior to and in anticipation of the closing of the merger is approved subject to the additional conditions set forth in this order.
2. That Southern Union Company shall be required to file complete financial documentation, concurrent to the action, for each investment, including, but not limited to, methods of finance, overall cost of the transaction, interest rate of borrowed funds, source of equity invested, and correspondence with brokers and investment firms. This documentation will include dated buy and sell orders for the specific investment.

3. That Southern Union Company shall be required to file monthly financial investment reports of the current status of all investments and investment activity. Content of these reports shall include (but is not limited to) initial investment, current carrying value, any activity such as stock splits, dates of sale, etc.

4. That Southern Union Company must undertake to capture, retain and make available to regulatory authority the raw data needed to capture all direct and indirect costs associated with the investments authorized by this order. Southern Union Company shall, at a minimum, maintain: a list of all persons involved in the investments authorized by this order; support personnel involved in the investments authorized by this order; the time spent by those personnel on the investments authorized by this order; and a list of all other expenses incurred by Southern Union Company on the investments authorized by this order. Such other expenses shall include but not be limited to consultants, communications, travel and debt costs. Southern Union Company must file a report within 30 days of the Commission's order detailing the information that it presently has captured and the procedures it will use to capture this information in the future. Such information must be maintained and made available through the completion of Southern Union Company's next rate case.

5. That Southern Union Company will represent that the investments authorized by this order will not affect the funding for the construction budget of its Missouri Gas Energy (MGE) operating division for this fiscal year nor MGE's operational expenses necessary to provide safe and adequate service. Further, Southern Union Company must demonstrate that next year's construction budget for MGE will not be affected by this Project. This demonstration will include MGE's commitment to its safety program for the year ending June 30, 2000. Southern Union Company must agree that to meet its construction obligations it will, if necessary, liquidate a portion of the investments authorized by this order to meet its obligations.

6. That Missouri ratepayers will suffer no adverse effects from any initial investment or losses suffered on such investments through either an amortization of said losses directly to the operating income of MGE or via reduction in retained earnings due to such losses. Southern Union Company's capital structure (actual dollar levels and percentage levels) will not be affected by losses on investments in determining the appropriate rate of return in the future. In order to ensure that the investments authorized by this order are not detrimental to the public interest, Southern Union Company must specify, in a report filed within 30 days of this order, the steps that it will take to insulate Missouri ratepayers from such possible results.

7. That Southern Union Company and MGE will not seek an increase to its requested Return on Equity or overall Rate of Return, for Missouri operations, due to factors of, or related to, actual leverage, percentage of leverage in the capital structure, risk associated with leverage, changes in cash or cash working capital or any other real or perceived changes in risk profile due to these investments. Also, any adverse effects on Southern Union Company's cost of debt will not be included in the calculation of Missouri-jurisdiction Rate of Return or cost of service. No adverse effect of the investments authorized by this order will be included in capitalization of AFUDC in Southern Union Company's rate base and/or under presently authorized AAOs. If the investments authorized by this order require interim financing, Southern Union Company will assign its lowest cost debt to regulated projects, and higher cost debt to unregulated projects.

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8. That for purposes of determining the appropriate level of equity balances, the term ownership equity shall be defined as those funds or securities, which have the most subordinate claim against the assets of Southern Union Company as compared to all other securities or claims upon the assets of Southern Union Company. Owner's equity does not include securities such as long term debt instruments, hybrid equity securities such as SUC's trust originated preferred securities, preferred stock, or short-term debt.

9. That nothing in this order shall be considered as a finding by the Commission that the merger transaction proposed in Case No. GM-2000-43 is consistent with the public interest.

10. That this order shall become effective on July 30, 1999.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crumpton, C., absent

Woodruff, Regulatory Law Judge

**Staff of the Missouri Public Service Commission, Complainant, vs.
Long Distance Services, Inc. Respondent.**

Case No. TC-98-337
Decided July 29, 1999

Telecommunications §33. The Commission approved a stipulation and agreement that resolved a complaint brought by the Staff of the Commission against a telephone company for switching the authorized long distance service provider of some 400 Missouri citizens to the company without the citizens' knowledge or consent in violation of Sections 392.200(3) and 392.240(2), RSMo.

ORDER APPROVING STIPULATION AND AGREEMENT

On February 9, 1998, the Staff of the Public Service Commission (Staff) filed a complaint against Long Distance Services, Inc. (LDSI). The complaint alleged that approximately four hundred Missouri citizens had filed complaints against LDSI alleging that it had "slammed" each citizen by switching the citizen's authorized long distance service provider to LDSI without the citizen's knowledge or consent in violation of Sections 392.200(3) and 392.240(2) RSMo. Staff's complaint asks that the Commission revoke LDSI's certificate of service authority to provide intrastate interexchange telecommunications services and authorize the Office of the General Counsel to seek the maximum penalties allowed under Section 386.600, RSMo (1994).

On February 11, 1999, the Commission notified LDSI of the complaint by issuing a Notice of Complaint. An Amended Notice of Complaint was issued on March 6,

1998. LDSI filed its Answer and a Statement of Affirmative Defenses on March 10, 1998. On May 14, 1998, the Commission issued an Order Adopting Procedural Schedule that directed the parties to prefile testimony and set the complaint for hearing on September 22 and 23, 1998.

Testimony filed by Staff indicated that during the course of its investigation, Staff became aware that LDSI was involved in bankruptcy proceedings in the United States Bankruptcy Court, Eastern District of Michigan. Staff also learned that LDSI was engaged in negotiations with the attorneys general from several states regarding resolution of slamming complaints. LDSI sought through those negotiations to be able to continue to offer long distance telecommunications service during and following its bankruptcy.

In order to allow the attorneys general and LDSI to finalize their settlement negotiations, the procedural schedule was amended by the Commission to provide for an evidentiary hearing on October 13, 1998. Subsequently the procedural schedule, including the scheduled hearing, were suspended by order of the Commission. Again, this action was taken to allow the attorneys general and LDSI more time to complete their negotiations.

On June 28, 1999, Staff, the Office of the Public Counsel (Public Counsel) and LDSI filed a stipulation and agreement. The stipulation and agreement represents that on March 8, 1999, LDSI and the attorneys general of Missouri, Alabama, Arkansas, Georgia, Illinois, Indiana, New York, Ohio and Tennessee filed a unanimous bankruptcy settlement agreement that was approved by the Bankruptcy Court. Staff received a final copy of the bankruptcy settlement agreement on May 21, 1999.

The stipulation and agreement represents that the bankruptcy settlement agreement, among other things, will: a) settle all slamming complaints previously lodged against LDSI; b) allow LDSI to continue offering long distance telecommunications service during and following its bankruptcy; c) require LDSI to release \$2,750,000 into a restitution fund to be distributed by the attorneys general to reimburse, to the extent possible, the slammed citizens who filed complaints; and d) require LDSI to institute stringent verification methods to ensure that any and all customer requests for LDSI's services are valid. LDSI agreed to comply with all terms of the bankruptcy settlement agreement and this stipulation and agreement. In the event that LDSI violates the terms of either the bankruptcy settlement agreement or the stipulation and agreement, LDSI will automatically relinquish its interexchange certificate for cancellation and its tariffs will automatically be revoked. In addition, the stipulation and agreement provides for institution of additional sanctions if the Missouri Attorney General's Office or the Commission receive any new complaints against LDSI.

The stipulation and agreement also represents that LDSI maintains that it will not be able to pay the large monetary refund called for under the bankruptcy settlement agreement unless it can continue to operate as a long distance carrier in Missouri and several other key states. Therefore, the bankruptcy settlement

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agreement is conditioned upon this Commission accepting the terms of this stipulation and agreement, thereby allowing LDSI to remain in business.

The stipulation and agreement also provides that within 10 business days following the filing of the stipulation and agreement, Staff was to file a memorandum explaining its rationale for entering into this stipulation and agreement. The other parties to the agreement were then allowed an additional five business days in which to file a response to Staff's memorandum. Staff filed its memorandum on July 7, 1999. No other party filed a response to Staff's memorandum.

Staff's memorandum indicates that approval of the stipulation and agreement and the resulting implementation of the bankruptcy settlement agreement will be in the best interest of Missouri customers slammed by LDSI and will effectively guard against future slamming incidents. The stipulation and agreement requires LDSI to place \$2,750,000 into a restitution fund to compensate the customers whom it slammed. If the Commission does not approve the stipulation and agreement, LDSI would likely convert its bankruptcy petition into a Chapter 7, liquidation plan and the slammed customers would be merely unsecured creditors and likely would not be able to recover any compensation.

In the stipulation and agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, have the transcript read by the Commission and to judicial review, if the Commission accepts the proposed stipulation and agreement. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the stipulation and agreement.

IT IS THEREFORE ORDERED:

1. That the stipulation and agreement filed on June 28, 1999 by the Staff of the Public Service Commission, the Office of the Public Counsel and Long Distance Services, Inc. is hereby approved (See Attachment A).

2. That this order shall become effective on August 10, 1999.

Lumpe, Ch., Murray, and Drainer, CC., concur
Schemenauer, C., dissents Crumpton, C., absent

Woodruff, Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Petition of Sprint Communications Company,
L.P., for Arbitration of Unresolved Interconnection Issues Re-
garding xDSL with Southwestern Bell Telephone Company.***

Case No. TO-99-461
Decided August 3, 1999

Telecommunications §46.4. Where parties could not agree on appropriate rates for line conditioning with respect to loops to be used for xDSL services and sought arbitration from the Commission, the Commission established rates based upon the evidence adduced by the parties.

APPEARANCES

Linda K. Gardner, Esq., Counsel, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Communications Company L.P.

Katherine Swaller, Esq., Counsel, One Bell Center, Suite 3536, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Penny G. Baker, Esq., Deputy General Counsel, and *Nathan Williams, Esq.*, Assistant General Counsel, 301 West High Street, Room 530, Jefferson City, Missouri 65101, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Kevin A. Thompson, Deputy Chief.

ARBITRATION ORDER

Procedural History

On April 13, 1999, Sprint Communications Company, L.P. (Sprint), filed its petition for arbitration with the Commission pursuant to the Telecommunications Act of 1996 (the Act) and Section 386.230 of the Revised Statutes of Missouri.¹

*The Commission, in an order issued on September 14, 1999, denied a rehearing in this case. In an order issued on October 18, 1999, the Commission extended the time to file the interconnection agreement to October 28, 1999.

¹All references herein to the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

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The petition asks the Commission to arbitrate issues related to the amendment of Sprint's existing interconnection agreement with Southwestern Bell Telephone Company (SWBT) to add language regarding xDSL services. Specifically, the parties are unable to agree on the pricing of certain of those services.

On April 15, 1999, the Commission issued a Notice of Petition for Arbitration, making SWBT a party, directing that a copy of the petition be served upon SWBT by the Commission's Records Department, and setting May 10, 1999, as the date by which SWBT's response to the petition, if any, must be filed. On that day, SWBT filed its motion seeking an extension, up to and including May 17, 1999, within which to file its response to Sprint's petition. SWBT filed its response to the petition for arbitration on May 17, 1999, and the Commission granted the requested extension on May 18, 1999.

A prehearing conference was held on June 11, 1999. The parties jointly filed a proposed procedural schedule on June 18, 1999, which the Commission adopted by order issued on June 22, 1999. Also on June 22, 1999, at the request of the parties, the Commission adopted its standard protective order. On June 23, 1999, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to participate as a party herein.

Sprint and SWBT filed Direct Testimony on June 25, 1999, and Rebuttal Testimony and Position Statements on July 2, 1999. Staff filed Rebuttal Testimony on July 2, 1999. An evidentiary hearing was held on July 9, 1999, at the Commission's offices in Jefferson City, Missouri. All parties were represented at the evidentiary hearing. Thereafter, the parties filed Briefs and Proposed Findings of Fact and Conclusions of Law on July 20, 1999.

At the hearing, SWBT requested the Commission to take notice of documents described as Administrative Advisory Staff (AAS) Reports 1 and 2. There being no objections, the Commission agreed to take notice of these items. In fact, they are volume 1 and volume 2 of the Costing and Pricing Report prepared by the Arbitration Advisory Staff of the Missouri Public Service Commission. Volume 1 is a highly confidential document contained in the record of Case Nos. TO-97-40 and TO-97-67. Volume 2 is a highly confidential document contained in the record of Case No. TO-98-115. The Commission, as requested, makes these items part of the record of this matter as Exhibits 15 and 16, respectively.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

The Telecommunications Act of 1996 (the Act), at 47 U.S.C. § 251(c)(3), imposes a duty on incumbent local exchange carriers (ILECs) to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory[.]” Where carriers are unable to resolve these issues through negotiation, the Act authorizes the parties involved to seek resolution from a State Commission by arbitration. Act, § 252(b). The State Commission is authorized to “establish any rates for interconnection, services, or network elements”; which rates must be cost-based and nondiscriminatory and “may include a reasonable profit.” Act, § 252(c)(2) and (d)(1).

Sprint seeks access to certain unbundled network elements (UNEs) belonging to SWBT in order to provide various types of rapid data transmission and reception services. These services are all species of Digital Subscriber Lines and are referred to by four-letter acronyms ending in “DSL,” hence, as a group, they are referred to as “xDSL” services. The UNEs to which Sprint seeks access are copper wire loops no more than 18,000 feet in length.² The dispute herein arises because some of these loops will require “conditioning” before they can be used for xDSL services. This conditioning entails the removal of certain devices which enhance the use of the loops in the transmission of voice communications but which interfere with xDSL services. These devices are load coils, repeaters, and bridged taps, and they are collectively referred to as “interferors.”

The dispute centers on the cost of the conditioning. SWBT maintains that it will incur costs in the removal of these interferors, which it would not undertake but for Sprint’s request, and that the Act guarantees that it will recover its costs. Sprint responds that it should not have to pay for any conditioning because such interferors should not be present on loops of the specified length. Sprint also argues that, if it must pay something, then the charges proposed by SWBT must be reduced because those charges are inflated. Both sides offered expert testimony as to the amount and type of effort involved in performing line conditioning.

Line conditioning involves several steps. First, SWBT must review its records to determine whether or not the loop in question requires conditioning at all. If it does, SWBT must do further research to precisely identify and locate each interferor. A technician must travel to the site of each interferor, access the desired loop, and then remove or disconnect the interferor. These activities undeniably result in real costs to SWBT. The Act requires that just and reasonable prices for access to UNEs be based on costs and be nondiscriminatory. Act, § 252(d)(1). Thus, the Commission cannot adopt Sprint’s suggestion that no charge be made for conditioning.

²The parties interchangeably used the figures 17,500 and 18,000.

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SWBT's present network is the end product of a lengthy evolution. Some of the loops in question contain interferors because they were constructed prior to the development of modern network standards. Some, perhaps most of the loops in question, are recovered segments of once longer loops. As fiber optic cable has been extended out from the central offices, copper loops 18,000 feet long have been recovered. These loops contain interferors that were necessary to serve the original copper loop longer than 18,000 feet. SWBT states that it would not remove these interferors but for Sprint's request. Therefore, Sprint must pay the cost involved, if any, in conditioning these loops.

The parties differ sharply in their estimates of those costs. Sprint contends that the conditioning process need not consume as many hours as SWBT estimates. Sprint argues, for example, that SWBT will require it to pay twice for the work involved in identifying and locating the interferors on a loop. Sprint also argues that SWBT has calculated its conditioning charges based on the removal of three load coils from a loop when only two need be removed and that SWBT is requiring it to pay for too much travel time. Sprint offers its own estimates of the cost involved in conditioning a loop. However, the Commission finds Sprint's figures to be unpersuasive. For example, Sprint does not offer competing evidence as to the number of hours typically required for load coil removal based on its own experience, but criticizes SWBT's estimate on the grounds that Sprint's technicians can complete allegedly more difficult work in less time. Sprint does not show that it can complete the same work in less time.

Finally, Sprint suggests that SWBT will use the opportunity offered by each loop conditioning episode to condition all 25 loops in the binder group containing the loop desired by Sprint and that Sprint should therefore only pay a fraction of the cost incurred in the conditioning. However, SWBT denies that it will or should do so. This suggestion must be rejected as well.

The Commission finds the testimony offered by SWBT as to the costs it incurs in performing loop conditioning to be generally persuasive. Nevertheless, some adjustment to SWBT's cost estimates is appropriate. The record shows that SWBT's ADSL tariff provides for an up-front, non-recurring charge of \$900 to retail customers desiring ADSL service from SWBT on a loop that requires any amount of conditioning. The \$900 charge was based on a weighted average derived from the same figures that SWBT proposed to charge Sprint for removing individual interferors. SWBT has therefore established a retail cost for conditioning a loop for provision of ADSL service. A wholesale discount rate of 19.2 percent was established in the AT&T/MCI/SWBT arbitration (Case Nos. TO-97-40 and TO-97-67) and the BroadSpan arbitration (Case No. TO-99-370). The Commission will reduce the conditioning charges proposed by SWBT to be charged to Sprint by 19.2 percent.

SWBT proposed to charge Sprint the following non-recurring charges for disconnecting interfering devices:

Removal of Repeater Option	\$358.30
Additional—same time & location	\$ 17.00
Removal of Bridged Tap Option	\$599.25
Additional—same time & location	\$ 30.00
Removal of Load Coil Option	\$987.35
Additional—same time & location	\$ 22.50

When the 19.2 percent wholesale discount is applied to those figures the result is the following:

Removal of Repeater Option	\$358.30	-	\$ 68.79	=	\$289.51
Additional—	\$ 17.00	-	\$ 3.26	=	\$ 13.74
Removal of Bridged Tap Option	\$599.25	-	\$115.06	=	\$484.19
Additional—	\$ 30.00	-	\$ 5.76	=	\$ 24.24
Removal of Load Coil Option	\$987.35	-	\$189.57	=	\$797.78
Additional—	\$ 22.50	-	\$ 4.32	=	\$ 18.18

SWBT will be allowed to charge Sprint these amounts for the removal of interferors on loops between 12,000 and 18,000 feet in length, except that, the charge for conditioning shall in no case exceed SWBT's established retail price for conditioning less the 19.2 percent discount, that is, \$727.20. Thus, Sprint will never pay more than \$727.20 for line conditioning, but may pay less, depending on the particular interferors that must be removed from a particular line.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

SWBT and Sprint are each a "telecommunications company" and a "public utility" within the intendments of Section 386.020(32) and (42), RSMo Supp. 1998, and therefore subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo. SWBT and Sprint are duly licensed and certificated telecommunications carriers. SWBT provides telecommunications services as an incumbent local exchange carrier. Sprint is a competitive local exchange carrier (CLEC) as well as an intrastate and interstate interexchange carrier. SWBT and Sprint are parties to an interconnection agreement approved by the Missouri Public Service Commission on September 15, 1998, in Case No. TO-99-1.

The Commission is authorized by Section 252(b) of the Telecommunications Act of 1996, to arbitrate open issues between telecommunications carriers seeking to access UNEs of an incumbent local exchange carrier, resolving each such issue by imposing appropriate conditions as required to implement Section 252(c) of the Act. SWBT is an incumbent local exchange carrier (ILEC) within the intendments of the Act. Act, § 251(h)(1).

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The Commission's arbitration jurisdiction is dependent upon invocation by a party to the negotiations "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section[.]" Act, § 252(b)(1). SWBT received Sprint's request for negotiations on November 4, 1998. Thereafter, on April 13, 1999, the 160th day following November 4, 1998, Sprint filed its petition seeking arbitration by this Commission. The Commission concludes that its arbitration jurisdiction was timely invoked in this case.

The Commission's duty in an arbitration is to "resolve each issue . . . by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement[.]" Act, § 252(b)(4)(C). The Commission must complete the resolution of any unresolved issue "not later than 9 months after the date on which the local exchange carrier received the request under this section." *Id.* In this case, the Commission must complete the arbitration by August 4, 1999.

In resolving this matter, the Commission must comply with the arbitration standards set out at Section 252(c) of the Act, and:

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The just and reasonable rates for network elements determined by the Commission must be based on costs and must be nondiscriminatory; such rates may also include a reasonable profit. Act, § 252(d)(1).

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company shall charge Sprint Communications Company, L.P., a non-recurring charge for loop conditioning on loops between 12,000 and 18,000 feet in length in the following amounts, provided that the charge for conditioning a single line shall in no case exceed \$727.20:

Removal of Repeater Option	\$289.51
Additional—same time & location	\$ 13.74
Removal of Bridged Tap Option	\$484.19
Additional—same time & location	\$ 24.24
Removal of Load Coil Option	\$727.20
Additional—same time & location	\$ 18.18

2. That for loops beyond 18,000 feet in length, Southwestern Bell Telephone Company shall develop discrete pricing component charges consistent in principle with the charges authorized in this order.

3. That this order shall become effective on August 4, 1999.

Lumpe, Ch., Crumpton and Schemenauer, CC., concur; Drainer and Murray, CC., dissent; and certify compliance with the provisions of Section 536.080, RSMo 1994.

In the Matter of the Application of Osage Water Company for Permission, Approval, and a Certificate of Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage and Maintain a Water System for the Public Located in Parkview Bay Subdivision, Osage Beach, Missouri. Osage Beach Fire Protection District, Complainant, v. Osage Water Company, Respondent.*

Case Nos. WA-98-236 & WC-98-211
Decided August 10, 1999

Water § 2. The Commission found that the water utility applicant met the five-part test to determine if a certificate of convenience and necessity should be granted.

REGULATORY LAW JUDGE: Lewis R. Mills

REPORT AND ORDER

Procedural History

On November 19, 1997, the Osage Beach Fire Protection District (the District) filed a complaint against Osage Water Company (Osage), alleging that Osage was providing water utility service in an area known as the Passover Road Expansion without having received a certificate of convenience and necessity from the Commission. The District requested that the Commission order Osage to stop providing water or, in the alternative, to stop charging for it¹. On December 10, 1997, Osage filed an application with the Commission requesting permission, approval, and a certificate of convenience and necessity authorizing it to construct, own, operate and maintain a water system for the public located in the Parkview Bay Subdivision (Parkview Bay) in Osage Beach, Camden County, Missouri. On February 11, 1998, the Commission issued an order consolidating the two cases, finding that they

*On November 2, 1999, this case was appealed to Cole County Circuit Court (99CV323281). On May 3, 2000, this case was appealed to the Western District Court of Appeals (WD58663).

¹ The District also requested that the Commission order it to provide water service. The District no longer seeks to provide water to customers.

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involve common questions of law and fact. For the purposes of these cases, the geographic area in each is the same².

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties and intervenors in this case. Some evidence and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

There was a great deal of time and testimony devoted to “issues” as far reaching as, for example, the design and performance of fire hydrants at a condominium development other than the one for which Osage seeks a certificate here. Much of the evidence submitted has no bearing on the issues the Commission must consider to resolve these cases. The parties agreed upon the issues in the Hearing Memorandum³, and the Commission will resolve each of those issues.

The three issues set out in the Hearing Memorandum are:

A. Do the Missouri statutes, the rules of the Missouri Public Service Commission, and the municipal ordinances of the City of Osage Beach, Missouri require Osage to obtain a franchise or consent from the City of Osage Beach before a certificate of convenience and necessity may be issued?

B. Should Osage be granted a certificate of convenience and necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a water system for the public, to serve the area known as Parkview Bay Subdivision in Osage Beach, Camden County, Missouri?

C. Is Osage presently supplying water to customers located in the area known as the Passover Road Expansion in Osage Beach, Camden County, Missouri without a valid certificate, and if so, should it be ordered to cease and desist from supplying water to those customers?

The District, in a pleading filed contemporaneously with the Hearing Memorandum, proposed to add the following two issues:

D. Has Staff actively participated in these two proceedings in an unbiased fashion?

² During the course of these cases, there has been an inordinate amount of procedural squabbling. The Commission will not recite here the litany of motions to compel discovery, strike testimony, dismiss cases, dismiss parties, quash depositions, and the like. The procedural history set out in this section is sufficient for a determination of the issues.

³ The District filed additional issues in a pleading filed separately from the Hearing Memorandum. The Commission will address these issues as well.

E Should the long-term financial viability of Osage be reviewed as a condition precedent to deciding if the Company should be granted a certificate of convenience and necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a water system for the public, to serve the area known as Parkview Bay Subdivision in Osage Beach, Camden County, Missouri?

The Commission will deal with each issue separately⁴

A. Is a franchise or consent necessary?

Staff and Osage argue that no franchise is needed, and the District argues that one is needed. The District's argument is circular and unpersuasive. The District cites rules from the Code of State Regulations and City ordinances in support of its argument, but its citations address the question of what is required of a franchisee, not the question of when a franchise is required. The District essentially assumes that a franchise is necessary, and then argues that Osage cannot lawfully provide water service without one. However, it is clear from the citations of the other parties that a franchise is necessary only to use public rights of way. It is equally clear from the record evidence that there are no public rights of way in the area Osage is seeking to serve. The Commission concludes that a franchise or consent is unnecessary.

B. Should Osage be granted a certificate?

In accordance with Section 393.170, RSMo 1994, the Commission has authorization to grant a certificate when such a certificate is necessary or convenient for the public service. The Commission has articulated requirements for certificates in Commission Rule 4 CSR 240-2.060(2), and the criteria to be used in evaluating such applications in *Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The Intercon case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest⁵. The Commission will apply these standards to Osage's application.

⁴In its Application, Osage requested that the Commission, in addition to granting a certificate of convenience and necessity, approve a loan apparently obtained in connection with the Parkview Bay project. The loan approval was not listed as an issue in either the Hearing Memorandum or the District's supplement, nor was it discussed in the parties' briefs. Accordingly the Commission will not address it.

⁵ These five criteria are the same as the ones used in Case No. GA-94-127, *In the Matter of the Application of Tartan Energy Company*, 3 Mo. P.S.C. 3d 173. The parties generally cite the Tartan case rather than the Intercon case, but the criteria are the same.

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(1) Is there a need for the service?

This is one of two issues on which there is no dispute. Both Staff and Osage testified that there is a need for public water utility service at Parkview Bay, and the District conceded as much in the response it filed on April 17, 1998, to Osage's requests for admissions.

(2) Is Osage qualified to provide the service?

Osage holds certificates from the Commission authorizing it to provide service in several other areas. It has been providing water as a regulated utility for a number of years. There was no evidence presented that customers in its other service areas, or in Parkview Bay, have complained about the quality of service Osage provides. Osage's vice president is an engineer, although not a licensed professional engineer, and has experience in the water utility industry.

The District raises a number of questions about Osage's compliance with Missouri Department of Natural Resources (MDNR) and Commission regulations. The District was unable to substantiate many of the alleged violations, and some of its claims were entirely specious. However, the Commission will address the claimed violations for which there appears to be supporting evidence.

The Commission finds that Osage has violated certain Commission regulations with respect to providing service at Parkview Bay without a certificate. However, Osage had applied to the Commission for a certificate for that area before it began providing service⁶. It also appears that MDNR has cited Osage for two violations. One has been corrected, and the other appears to have been minor, and unwittingly committed. The Commission finds that none of the violations claimed by the District are serious enough to make approval of its application against the public interest. The Commission further finds that Osage is qualified to provide water utility service.

(3) Is Osage financially able to provide the service?

The Staff examined the books and records of Osage and concluded that it has the financial wherewithal to provide water utility service to the Parkview Bay condominiums. Staff's audit of Osage's general ledger covered the period from 1991 through 1997, and showed that Osage is able to meet its operating expenses from its revenues. Osage's debt is primarily to the three original owners of the company, and the settlement, just before hearing, of litigation brought by one of those owners will improve Osage's financial position.

The District presented a great deal of confusing, and sometimes conflicting, evidence designed to prove that Osage is not only financially unable to provide service, but that it is currently insolvent. The Commission does not accept the

⁶ Osage filed its application to serve the area at issue here in Case No. WA-97-332 before it began providing service. However, Osage began providing service before its application was approved, and when the Commission dismissed the application in WA-97-332 because Osage had failed to show that it had received a franchise or to show that a franchise was not necessary, Osage continued to provide service.

District's definition of insolvency, finds that the District's evidence concerning Osage's financial condition is not persuasive, and finds that Osage is financially capable of providing service.

(4) Is Osage's proposal economically feasible?

Although the District did not discuss the feasibility of the project in its testimony or initial brief, it does address it in its reply brief. However, it limits itself to a discussion of the physical feasibility of upgrading the present well. It does not point to any evidence that shows the project as planned, and as constructed so far, is economically infeasible.

The water system at Parkview Bay is in place and serving customers. Thus the situation in this case is unlike many applications for certificates of convenience and necessity where the system exists only on paper. It is much easier to conclude that an already built and operating system is economically feasible than one where the number of customers and the costs of construction are speculative. The Commission finds that Osage's proposal to serve Parkview Bay is economically feasible.

(5) Does the service promote the public interest?

Staff argues, and the District does not appear to disagree, that this question is essentially duplicative of the first four. In other words, if an applicant has met the first four tests, it meets this one by definition.

Nothing in the District's prefiled testimony directly speaks to this issue, although its entire case really is an attempt to prove that the public interest will be better served if the City rather than Osage provides water to Parkview Bay. The District's briefs are not well organized, and this issue seems to have escaped its attention in drafting its initial brief. In its reply brief, the District argues against points raised by other parties about this issue, but the arguments just repeat those addressed elsewhere in this Report and Order. The Commission finds that it will be in the public interest to grant Osage a certificate of convenience and necessity to provide water utility service at Parkview Bay.

C. Is Osage presently providing water without a certificate?

This is the second of the two issues on which there is no dispute. All parties agree that Osage is presently providing water at Parkview Bay without a certificate, and the Commission so finds. In its filed complaint, the District asked that Osage be ordered to stop providing water without a certificate, but did not request sanctions or penalties against Osage. As a result, upon the effective date of this Report and Order, Osage will have a certificate, and this point will be moot.

Furthermore, Osage did apply for a certificate before it began providing service, and that application was dismissed because of Osage's lack of a franchise (an issue which is resolved in Osage's favor herein). Osage reapplied for a certificate in this case shortly after its application for rehearing was denied its first application. Thus, it does not appear that Osage acted in bad faith.

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D. Was the Staff biased?

This issue is one that is raised, not in the Hearing Memorandum, but in the District's proposed additions to it. In its briefs, the District alleges various improprieties of which it believes the Staff is guilty. For example, Staff on a number of occasions made reference to Commission cases that have relevance to the instant case. The District believes that because those cases were not consolidated with the instant case, the Staff has exhibited bias in referring to them. The District provides no support for this odd claim, and the Commission finds no merit to it.

Only one of the alleged instances of bias warrants discussion. It arises because a Staff member, prior to his current employment with the Commission, performed consultant services for Osage and received payment for those services during the pendency of this case. Although the Staff member showed poor judgment in becoming involved in a proceeding involving Osage while he was still owed money for services he had performed as a consultant, there is no evidence that the circumstances in any way affected Staff's position on the issues.

The Commission finds that the Staff showed no bias or prejudice
In recommending approval of Osage's application.

E. Should Osage's long-term financial viability be reviewed?

The District never really defines long-term financial viability or proposes a specific way to measure it, and the Commission finds no reason to doubt Osage's long term prospects. While poor management can quickly sink any small company, the evidence indicates Osage's management is competent to operate a water utility, and its future prospects are no more suspect than those of other small water companies regulated by the Commission.

Osage has recently settled a lawsuit brought by a former principal of the business, and resolved the questions about its potential liability to him. As a result, its financial future is considerably clearer, and brighter, than it was before the settlement. The Commission finds that there is no competent evidence concerning Osage's long-term financial viability that would warrant denial of its application.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Osage is a public utility engaged in the provision of water service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

Specifically, the application for a certificate of convenience and necessity is controlled by Section 393.170(3), which states:

The commission shall have the power to grant the permission
and approval herein specified whenever it shall after due hearing

determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

The Commission finds that granting Osage a certificate is necessary and convenient for the public service.

IT IS THEREFORE ORDERED:

1. That the application of Osage Water Company for a certificate of convenience and necessity to construct, install, own, operate, control, and manage a water system in the Parkview Bay condominium development is granted.
2. That the certificate of convenience and necessity referenced in ordered paragraph 1 shall become effective simultaneous with the effective date of the tariff sheets required to be filed and approved pursuant to ordered paragraph 3.
3. That Osage Water Company shall file with the Commission tariff sheets modifying its water service to reflect the additional service area granted herein.
4. That nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.
5. That the Commission reserves the right to consider the ratemaking treatment to be afforded the properties herein involved, and the resulting cost of capital, in any later proceeding.
6. That the Complaint filed by the Osage Beach Fire Protection District is dismissed.
7. That this order shall become effective on August 20, 1999.

Lumpe, Ch., and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994 Schemenauer, C., dissents
Crumpton and Murray, CC., absent

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**In the Matter of the Application of Southern Union Company for
Authority to Make Non-Control Investments, Either Directly
or Indirectly, in Non-Jurisdictional Energy Utilities.***

Case No. GF-98-425

Decided August 17, 1999

Gas § 7. Section 393.190.2 statute requires prior Commission approval of an acquisition of stock or bonds. Such approval can only be meaningful if the terms of the acquisition are known. Approval of an acquisition in general terms, when none of the specifics are known would render the provisions of the statute meaningless.

REGULATORY LAW JUDGE: Lewis R. Mills

REPORT AND ORDER

Procedural History

On April 6, 1998, Southern Union Company (Southern Union) filed an application requesting that the Commission authorize it to make investments in gas and electric utilities without the necessity of prior Commission approval of each investment. Southern Union limits its request to non-control (*i.e.*, less than 10%) investments in utilities that are not regulated by the Commission. Southern Union further limits its request to investments that, in the aggregate, total less than \$50,000,000, and suggests that the authority granted be limited to five years' duration.

On May 13, Atmos Energy Corporation (Atmos) filed an application to intervene, or in the alternative, to participate without intervention. On June 9, the Office of the Public Counsel (Public Counsel) filed a motion to reject the application, or in the alternative, to set this matter for hearing. On July 7, 1998, the Commission granted Atmos' application to intervene and denied Public Counsel's motion to reject Southern Union's application. The parties filed testimony pursuant to a Commission-ordered procedural schedule and a hearing was held on November 13, 1998.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has reviewed and considered all of the evidence and arguments presented by the various parties and intervenors in this case. Some evidence

*The Commission, in an order issued on October 5, 1999, denied a rehearing in this case. On June 15, 2001, this case was appealed to Cole County Circuit Court (O1CV324466).

and positions of parties on some issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or a position of a party indicates that, while the evidence or position was considered, it was not found relevant or necessary to the resolution of the particular issue.

Although the parties did not clearly define the issues in the Hearing Memorandum (there was no single list of issues that all parties agreed to), the issues can be stated as follows: does the Commission have authority to grant the type of approval Southern Union seeks; and, if the Commission does have authority, will granting approval be detrimental to the public interest? The Commission finds that it does not have statutory authority to approve Southern Union's application, and further finds that, even if it did, granting the application would be detrimental to the public interest.

Authority

Both Staff and Southern Union believe that the Commission does have authority, and Public Counsel disagrees. Section 393.190.2 states in pertinent part:

No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business . . . unless . . . authorized so to do by the commission.

The Commission is an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto. *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181(5) (Mo. App. 1960). The clear intent of the legislature, and the clear meaning of the statute, is that the Commission is to authorize specific acquisitions. If the Commission were to grant Southern Union's application, and allow it to enter into stock acquisitions in which the time, the target, the price, and the financing terms are all unknown, the Commission would be abdicating its responsibility to give meaningful review to the acquisition. The Commission determines that it does not have statutory authority to approve Southern Union's application.

Staff and Public Counsel, and possibly Atmos, believe that the Commission needs to address the question of whether Southern Union has demonstrated good cause for a waiver of the filing requirements set forth in 4 CSR 240-2.060(9). That rule only applies to applications for approval of the purchase of stock in Missouri utilities. Staff and Public Counsel argue that, because the Commission is required by 393.190.2 to rule on the acquisition of stock in both Missouri and non-Missouri public utilities, 4 CSR 240-2.060(9) must apply to acquisitions of stock in Missouri and non-Missouri utilities. Simply because the Commission must by statute rule on the acquisition of stock in non-Missouri utilities does not mean that it must establish filing requirements for approval of such acquisitions. Neither does it mean the filing requirements that the Commission has established for applications for approval of the stock of Missouri utilities must be applied to applications for approval of the stock of non-Missouri utilities.

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Because 4 CSR 240-2.060(9) does not apply to the application herein, Southern Union is not required to establish good cause for a waiver of the rule's provisions. However, Southern Union's approach of generally following the requirements of 4 CSR 240-2.060(9), in the absence of a rule specifically setting forth the filing requirements for applications of this type, was the proper one.

Public Interest

Even though the Commission has determined that it does not have authority to approve the application herein, it will nonetheless address the question of whether approval would be detrimental to the public interest. Southern Union claims that approval of its application will allow that company to make investments in stocks that will either result in a business combination or a gain on the sale of the stock. It discounts the possibility that the investments will not lead to a business combination and that the subsequent sale of the stock will be made at a loss, calling these outcomes "remote" and "highly unlikely." The Commission finds them to be neither remote nor highly unlikely. Investors incur losses trading in stocks every day, and there was no evidence that Southern Union is immune to this risk. Furthermore, there was no evidence that any investment in a company's stock will necessarily lead to a business combination, much less that the business combination will turn out to be a good one. Simply put, because none of the details about any transaction are known, a positive outcome is no less speculative than a negative one.

Southern Union argues that, if the investments have the potential to harm ratepayers, the Commission can insulate ratepayers from harm through its review in a subsequent rate case. Public Counsel likens this after-the-fact approach to putting out a fire, and argues that reviewing the details of specific transactions before they are consummated is more like fire prevention. The Commission finds that, even with subsequent rate case review, a significant potential exists that Missouri ratepayers could be harmed. The Commission concludes that it would be detrimental to the public interest to grant the blanket approval Southern Union seeks. Southern Union's application will be denied.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Southern Union Company, through its Missouri Gas Energy operating division, is a public utility engaged in the provision of natural gas service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994.

Specifically, the proposed acquisition of stock is controlled by Section 393.190.2, which states in part:

No such corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged

in, the same or a similar business . . . unless . . . authorized so to do by the commission.

The statute requires prior Commission approval of an acquisition of stock or bonds. Such approval can only be meaningful if the terms of the acquisition are known. Approval of an acquisition in general terms, when none of the specifics are known would render the provisions of the statute meaningless.

IT IS THEREFORE ORDERED:

1. That the application of Southern Union Company for authority to make non-control investments in non-jurisdictional electric and gas utilities, filed on April 6, 1998, is denied.

2. That this order shall become effective on August 27, 1999.

3. That this case may be closed on August 30, 1999.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crumpton, C., not participating

Mills, Deputy Chief Regulatory Law Judge

In the Matter of Revised Natural Gas Rate Schedules Designed to Increase St. Joseph Light & Power Company's Annual Natural Gas (Tariff File 9900426) Revenues by Approximately \$499,104 Exclusive of Applicable Fees and Taxes.

Case No. GR-99-246
Decided August 17, 1999

Gas § 18, 19. The Commission approved a stipulation and agreement which provided that the company would withdraw its proposed natural gas tariff sheets and that no change would be made in the rate schedules then in effect for natural gas service, except that the company would be authorized to file tariff sheets to implement a returned check charge. The returned check charge would be a single charge for combined gas and electric customers. The company was also authorized to file additional sheets reflecting miscellaneous changes and corrections, and was directed to utilize the depreciation rates found in Appendix B of the stipulation and agreement.

Gas § 33. The Commission authorized the company to file tariff sheets to implement a returned check charge. The returned check charge would be a single charge for combined gas and electric customers.

ORDER APPROVING STIPULATION AND AGREEMENT

On December 1, 1998, St. Joseph Light & Power Company (SJLP) filed revised natural gas rate schedules designed to increase SJLP's annual natural gas revenues by approximately \$499,104, or 10.46 percent. SJLP's revised rate tariffs were assigned

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tariff number 9900426 and Case No. GR-99-246. On December 24, 1998, the Commission suspended the proposed tariffs to November 1, 1999, and set the case for hearing beginning on July 6, 1999. In an order issued June 23, 1999, the Commission allowed the participation without intervention of Friskies Petcare, AG Processing, Inc., and Wire Rope Corporation of America (collectively the “Industrial Customers”).

On July 6, the parties appeared for the scheduled hearing. The Commission granted Staff’s oral motion to recess the hearing for one day to allow for further settlement negotiations. The parties again appeared for hearing on July 7. At that time the parties announced that they had reached an agreement in principle to settle these cases and requested that the hearing be continued to allow the parties to prepare and file a written Stipulation and Agreement. The hearing was continued to allow the parties to prepare such a Stipulation and Agreement.

On July 16, SJLP, Staff, and the Office of the Public Counsel (OPC) filed a Unanimous Stipulation and Agreement. The Stipulation and Agreement purported to settle all disputes between the parties regarding Case No. GR-99-246. The Stipulation and Agreement provided that SJLP would withdraw all of the proposed natural gas tariff sheets it filed on December 1, 1998, and that no change would be made in the rate schedules currently in effect for natural gas service, except that SJLP would be authorized to file tariff sheets to implement a returned check charge of ten dollars (\$10.00). The Stipulation and Agreement provided that the returned check charge shall be worded such that it is only a single charge for combined gas and electric customers. SJLP was also authorized to file additional sheets reflecting miscellaneous changes and corrections shown in Appendix A. Depreciation rates were attached to the Stipulation and Agreement as Appendix B.

The Commission established August 9, 1999, as the date for a hearing at which the parties could answer the Commission’s questions regarding the proposed Stipulation and Agreement. At the request of the Commission, Staff filed a Memorandum explaining its rationale for entering into the Stipulation and Agreement on July 30. On August 6, the Commission issued a notice canceling the hearing on the stipulation and agreement.

In the Stipulation and Agreement, contingent upon the Commission accepting the Stipulation and Agreement, the parties waived their rights to present testimony, to cross-examine witnesses, to present oral argument or briefs, to have the transcript read by the Commission and to judicial review. Also contingent upon the Commission’s acceptance of the Stipulation and Agreement, the parties agreed that all of the prefiled testimony submitted by SJLP, Staff, and OPC should be received into evidence without the necessity of the respective witnesses taking the stand. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.

State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on July 16, 1999 by St. Joseph Light & Power Company, the Staff of the Public Service Commission, and the Office of the Public Counsel is hereby approved as a resolution of all issues in these cases (See Attachment 1).
2. That the prefiled testimony and schedules submitted on behalf of St. Joseph Light & Power Company, the Staff of the Public Service Commission, and the Office of the Public Counsel are received into evidence.
3. That St. Joseph Light & Power is ordered to utilize the depreciation rates as specified in Appendix B of the Unanimous Stipulation and Agreement.
4. That the revised natural gas rate schedules filed by St. Joseph Light & Power on December 1, 1998 are rejected.
5. That St. Joseph Light & Power is authorized to file tariff sheets designed to implement a returned check charge of ten dollars (\$10.00) worded such that it is only a single charge for combined gas and electric customers, and additional sheets reflecting miscellaneous changes and corrections, as shown in Appendix A of the Unanimous Stipulation and Agreement.
6. That this order shall become effective on August 27, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Ruth, Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

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In the Matter of St. Joseph Light & Power Company's Revised Industrial steam Rate Schedules Designed to Increase Rates for Steam Service in the Company's Missouri Service Territory.

Case No. HR-99-245
Decided August 17, 1999

Steam §20. The Commission ordered that SJLP should file rate schedules designed to reduce the gross annual industrial steam service revenues of SJLP by a total of \$25,000 effective for service rendered on and after October 31, 1999.

ORDER APPROVING STIPULATION AND AGREEMENT

On December 1, 1998, SJLP filed revised industrial steam service rate schedules designed to increase SJLP's annual industrial steam service revenues by approximately \$274,423, or 14.95 percent. SJLP's revised rate tariffs were assigned tariff number 9900425 and Case No. HR-99-245. On December 23, 1998, the Commission issued a Suspension Order and Notice. That Order, *inter alia*, suspended SJLP's revised rate tariffs until November 1, 1999 and set the case for hearing beginning on July 6, 1999.

On July 6, 1999, the parties appeared for the scheduled hearing. The Commission granted Staff's oral motion to recess the hearing for one day to allow further settlement negotiations. The parties again appeared for hearing on July 7, 1999. At that time the parties announced that they had reached an agreement in principle to settle this case and requested that the hearing be continued to allow the parties to prepare and file a written Stipulation and Agreement. The hearing was continued to allow the parties to prepare such a Stipulation and Agreement.

On July 16, 1999, SJLP, Staff, the Office of the Public Counsel (OPC), AG Processing, Inc., and Friskies Petcare, a division of Nestle USA, (collectively referred to as "Industrial Customers"), filed a Unanimous Stipulation and Agreement. The Unanimous Stipulation and Agreement purported to settle all disputes between the parties regarding Case No. HR-99-245. The Unanimous Stipulation and Agreement provided that SJLP would file and the Commission would approve rate schedules designed to reduce the gross annual industrial steam service revenues of SJLP by a total of \$25,000 effective for service rendered on and after October 31, 1999. Sample revised rate schedules appropriately implementing the changes agreed upon in the Stipulation and Agreement were attached to the Unanimous Stipulation and Agreement as Appendix A.

The Commission established August 9, 1999, as the date for a hearing at which the parties could answer the Commission's questions regarding the proposed Stipulation and Agreement. At the request of the Commission, Staff filed a Memorandum explaining its rationale for entering into the Stipulation and Agreement on July 30, 1999. On August 5, 1999, the Commission issued a notice canceling the hearing on the stipulation and agreement.

In the Stipulation and Agreement, contingent upon the Commission accepting the Stipulation and Agreement, the parties waived their rights to present testimony, to cross-examine witnesses, to present oral argument or briefs, to have the transcript read by the Commission and to judicial review. Also contingent upon the Commission's acceptance of the Stipulation and Agreement, the parties agreed that all of the prefiled testimony submitted by SJLP, Staff, OPC and Industrial Customers should be received into evidence without the necessity of the respective witnesses taking the stand. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on July 16, 1999, by St. Joseph Light & Power Company, the Staff of the Public Service Commission, the Office of the Public Counsel, AG Processing, Inc., and Friskies Petcare, a division of Nestle USA, is hereby approved as a resolution of all issues in this case (See Attachment 1).

2. That the prefiled testimony and schedules submitted on behalf of St. Joseph Light & Power Company, the Staff of the Public Service Commission, the Office of the Public Counsel, AG Processing, Inc., and Friskies Petcare, a division of Nestle USA, are received into evidence.

3. That St. Joseph Light & Power is ordered to utilize the depreciation rates as specified in Appendix B of the Unanimous Stipulation and Agreement

4. That the revised industrial steam service rate schedules filed by St. Joseph Light & Power on December 1, 1998 are rejected.

5. That St. Joseph Light & Power is authorized to file tariff sheets designed to reduce the gross annual industrial steam service revenue of St. Joseph Light & Power, exclusive of sales and other similar taxes on gross receipts, by a total of Twenty Five Thousand Dollars (\$25,000.00) effective for services rendered on and after October 31, 1999, in conformance with the sample tariff sheets shown in Appendix A of the Unanimous Stipulation and Agreement.

6. That this order shall become effective on August 27, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Hopkins, Senior Regulatory Law Judge

EDITOR'S NOTE: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

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**In the Matter of St. Joseph Light & Power Company's Revised
Electric Rate Schedules Designed to Increase Rates for Elec-
trical Service in the Company's Missouri Service Territory.**

**The Staff of the Missouri Public Service Commission, Complainant,
vs. St. Joseph Light & Power Company, Respondent.**

Case Nos. ER-99-247 & EC-98-573

Decided August 17, 1999

Electric §22. The Commission approved a unanimous stipulation and agreement whereby an electric utility agreed to reduce its gross annual electric service revenues by a total of \$2,500,000.

ORDER APPROVING STIPULATION AND AGREEMENT

On June 19, 1998, the Staff of the Public Service Commission (Staff) filed a Complaint against St. Joseph Light & Power Company (SJLP), alleging that SJLP was over-earning by approximately eight million dollars per year. Staff's Complaint was assigned Case No. EC-98-573. On December 1, 1998, SJLP filed revised electric rate schedules designed to increase SJLP's annual Electric revenues by approximately \$6,098,094. SJLP's revised rate tariffs were assigned tariff number 9900427 and Case No. ER-99-247. On December 22, 1998, the Commission issued a Suspension Order and Notice. That Order suspended SJLP's revised rate tariffs until November 1, 1999. On February 17, 1999, the Commission issued an order consolidating the complaint case, Case No. EC-98-573, with the rate case, Case No. ER-99-247. The combined cases were set for hearing beginning on July 6, 1999.

On July 6, the parties appeared for the scheduled hearing. The Commission granted Staff's oral motion to recess the hearing for one day to allow for further settlement negotiations. The parties again appeared for hearing on July 7. At that time the parties announced that they had reached an agreement in principle to settle these cases and requested that the hearing be continued to allow the parties to prepare and file a written Stipulation and Agreement. The hearing was continued to allow the parties to prepare such a Stipulation and Agreement.

On July 16, SJLP, Staff, the Office of the Public Counsel (OPC), AG Processing, Inc., Friskies Petcare, a division of Nestle USA, Wire Rope Corporation of America, and Quaker Oats Company (collectively referred to as "Industrial Customers") filed a Unanimous Stipulation and Agreement. The Unanimous Stipulation and Agreement purported to settle all disputes between the parties regarding Case Nos. EC-98-573 and ER-99-247. The Unanimous Stipulation and Agreement provided that SJLP would file and the Commission would approve rate schedules designed to reduce the gross annual electric service revenues of SJLP by a total of \$2,500,000 effective for service rendered on and after October 31, 1999. Sample revised rate schedules appropriately implementing the changes agreed upon in the Stipulation and Agree-

ment were attached to the Unanimous Stipulation and Agreement as Appendix A.

The Commission established August 9, 1999 as the date for a hearing at which the parties could answer the Commission's questions regarding the proposed Stipulation and Agreement. At the request of the Commission, Staff filed a Memorandum explaining its rationale for entering into the Stipulation and Agreement on July 30. On August 5, the Commission issued a notice canceling the hearing on the stipulation and agreement.

In the Stipulation and Agreement, contingent upon the Commission accepting the Stipulation and Agreement, the parties waived their rights to present testimony, to cross-examine witnesses, to present oral argument or briefs, to have the transcript read by the Commission and to judicial review. Also contingent upon the Commission's acceptance of the Stipulation and Agreement, the parties agreed that all of the prefiled testimony submitted by SJLP, Staff, OPC and Industrial Customers should be received into evidence without the necessity of the respective witnesses taking the stand. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on July 16, 1999 by St. Joseph Light & Power Company, the Staff of the Public Service Commission, the Office of the Public Counsel, and AG Processing, Inc., Friskies Petcare, a division of Nestle USA, Wire Rope Corporation of America and Quaker Oats Company, is hereby approved as a resolution of all issues in these cases (See Attachment 1).

2. That the prefiled testimony and schedules submitted on behalf of St. Joseph Light & Power Company, the Staff of the Public Service Commission, the Office of the Public Counsel, and AG Processing, Inc., Friskies Petcare, a division of Nestle USA, Wire Rope Corporation of America and Quaker Oats Company, are received into evidence.

3. That St. Joseph Light & Power is ordered to utilize the depreciation rates as specified in Appendix B of the Unanimous Stipulation and Agreement.

4. That the revised electric rate schedules filed by St. Joseph Light & Power on December 1, 1998 are rejected.

5. That St. Joseph Light & Power is authorized to file tariff sheets designed to reduce the gross annual electric service revenue of St. Joseph Light & Power, exclusive of sales and other similar taxes on gross receipts, by a total of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) effective for services rendered on and after October 31, 1999, in conformance with the sample tariff sheets shown in Appendix A of the Unanimous Stipulation and Agreement.

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6. That this order shall become effective on August 27, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Woodruff, Regulatory Law Judge

**In the Matter of the Petition of Sprint Missouri, Inc. Regarding
Price Cap Regulation Under RSMo Section 392.245 (1996)**

*Case No. TO-99-359
Decided August 19, 1999*

Telecommunications §14. Where, in order to qualify for price cap regulation a company must show (1) that a competitive local exchange company (CLEC) is properly certificated to provide service in the Applicant's service area, and (2) that the CLEC is, in fact, providing service in any part of the Applicant's service area, Sprint made the requisite showing and so was entitled to price-cap regulation status.

Telecommunications §14. The Commission has previously held that the statute authorizing price-cap regulation does not require notice to the public nor does it require a hearing, therefore, Public Counsel's request for a hearing will be denied.

ORDER APPROVING PRICE CAP APPLICATION

On February 23, 1999, Sprint Missouri, Incorporated (Sprint) filed a verified petition seeking price cap regulation under Section 392.245, RSMo¹. Sprint has asserted that it is eligible to convert from rate base/rate of return regulation to price cap regulation. Sprint cites as authority for its request Section 392.245.2 which states:

A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area.

In order to qualify for price cap determination under the statute, the Applicant must show: (1) that a competitive local exchange company (CLEC) is properly certificated to provide service in the Applicant's service area, and (2) that the CLEC is in fact providing service in any part of the Applicant's service area. In support of its application, Sprint cites the Commission's Report And Order issued on November 25, 1997, which granted a certificate to ExOp of Missouri Incorporated (ExOp) to provide basic local exchange service within the exchanges of

¹ All statutory references are to the Revised Statutes of 1998 Cumulative Supplement unless otherwise noted.

Sprint. On June 3, 1998, the Commission issued an order approving the interconnection agreement between ExOp and Sprint and ExOp's tariff became effective on December 15, 1998.

Sprint attached to its verified petition documentation in support of the fact that ExOp is providing service to customers within the Kearney and Platte City, Missouri, exchanges of Sprint.

The Commission has reviewed the Petition filed by Sprint and has determined that:

a) Sprint is a local exchange telecommunications company which has been authorized to provide and has provided telecommunications services in a specific geographic area in the state of Missouri prior to December 31, 1995, and thus is an incumbent local exchange telecommunications company as defined in Section 386.020(22).

b) Sprint has at least 100,000 access lines in the state of Missouri, and thus is a large local exchange telecommunications company as defined in Section 386.020(30).

c) ExOp received a certificate of service authority to provide basic local telecommunications service on November 25, 1997 and ExOp's tariffs became effective on December 15, 1998.

d) ExOp received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

e) ExOp is providing basic local telecommunications service to customers in the Kearney and Platte City, Missouri, exchanges of Sprint.

The Commission has determined that Sprint has met the conditions contained in Section 392.245.2, and thus shall be subject to price cap regulation.

Section 392.245.3 provides that the maximum allowable rates for a company subject to price cap regulation are those in effect on December 31 of the year preceding the year in which the company is first subject to price cap regulation, except as otherwise provided in the statute. The Commission has determined that the initial maximum allowable prices which Sprint may charge for its telecommunications services are the prices which were in effect on December 31, 1998.

Section 392.245.4 provides that the maximum allowable rates for basic local telecommunications service and exchange access service shall not be changed prior to January 1, 2000, except in certain circumstances. The Commission has determined that Sprint shall be prohibited from changing the maximum rates for those services before January 1, 2000, or until such time as one of the statutory exceptions may apply.

On March 5, 1999, the Office of the Public Counsel (Public Counsel) filed a motion requesting an evidentiary hearing in which it argued that "an evidentiary hearing is necessary prior to this Commission making such a determination as required by Section 392.245 (1996), RSMo." The Commission has previously held, in Case No. TO-99-294² that "The statute does not require notice to the public nor does it state

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that such determination may only be made after hearing. In fact, the statute does not require findings of fact and conclusions of law, but rather, only anticipates ‘a determination by the Commission’ that such events have occurred.” Upon judicial review, the court has upheld this position. Section 392.245(2), RSMo Supp. 1998, does not require notice and hearing prior to the determination of the PSC that a large local exchange telecommunications company is subject to price cap regulation. See *State of Missouri ex. rel. Public Counsel Martha S. Hogerty v Missouri Public Service Commission*, Case No. CV199-282CC, conclusions of law 2, page 5, Findings of Fact, Conclusions of Law and Judgment, issued July 27, 1999.

The Commission has determined that Sprint qualifies under the statutory provision and shall be granted price cap status.

IT IS THEREFORE ORDERED:

1. That Sprint Missouri, Incorporated has met the prerequisites of Section 392.245.2, RSMo Supp. 1998, and may therefore convert from rate base/rate of return regulation to price cap regulation.

2. That the maximum allowable prices which may be charged by Sprint Missouri Incorporated are the prices which were in effect on December 31, 1998.

3. That Sprint Missouri Incorporated may not change the maximum allowable prices for basic local telecommunications service or exchange access service prior to January 1, 2000, unless otherwise authorized by the Commission in accordance with Sections 392.245.8, 392.245.9, or 392.247, RSMo Supp. 1998.

4. That this order shall become effective on August 29, 1999.

5. That this case may be closed on August 30, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Roberts, Chief Regulatory Law Judge

² In re the petition of GTE Midwest Incorporated regarding price cap regulation under RSMo Section 392.245 (1996).

**In the Matter of the Application of Southern Union Company for
Authority to Acquire up to and Including Five Percent (5%) of
the Common Stock of Pennsylvania Enterprises, Inc.***

Case No. GM-2000-49
Decided August 24, 1999

Gas §6. The Commission granted a gas utility's motion for rehearing and deleted a condition that imposed a definition of ownership equity on the Commission's approval of the utility's application for authority to purchase up to and including five percent of the outstanding stock of an out-of-state utility in anticipation of a merger when ownership equity was at issue in the underlying merger case but was not relevant to the instant application.

ORDER GRANTING APPLICATION FOR RECONSIDERATION

On July 20, 1999, Southern Union Company (Southern Union) filed an application with the Commission requesting authority to acquire up to and including five percent of the common stock of Pennsylvania Enterprises, Inc. (PNT). In a companion case, case number GM-2000-43, Southern Union requested authority to complete a merger with PNT. In this case, Southern Union sought authority to immediately purchase a portion of the stock of PNT for the purpose of mitigating the pricing effect of possible arbitrage trading in PNT shares prior to the time of closing of the merger. Along with its Application, Southern Union filed a motion requesting expedited consideration of this application to permit the proposed transactions to occur no later than July 31. Southern Union requested that the Commission issue its order approving its application no later than July 30, bearing an effective date of the date of issuance. On July 29, the Commission's Staff filed a recommendation regarding the application of Southern Union. Staff recommended that the Commission reject the application as submitted, but indicated that if the Commission should choose to approve the application it do so with several conditions attached. On July 29, the Commission issued an Order that approved Southern Union's application and granted it the authority it sought to purchase up to and including five percent of PNT's outstanding stock. The Commission's Order included the eight additional conditions recommended by Staff.

On July 30, Southern Union filed an Application for Reconsideration, or, in the Alternative, Rehearing. In this application, Southern Union asked the Commission to remove the condition contained in ordered paragraph eight of the Order issued on July 29. That condition is as follows:

That for purposes of determining the appropriate level of equity balances, the term ownership equity shall be defined as those funds or securities, which have the most subordinate claim against the assets of Southern Union Company as compared to all other securities or claims upon the assets of

*See page 268 for another order in this case.

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Southern Union Company. Owner's equity does not include securities such as long-term debt instruments, hybrid equity securities such as SUC's trust originated preferred securities, preferred stock, or short-term debt.

Southern Union's Application for Rehearing argues that "The question of appropriate levels of 'equity balances' is not a relevant consideration in this Application, inasmuch as Southern Union is not seeking rate-making treatment with respect to its existing or any proposed capital structure." In particular, Southern Union argues that its use of trust originated preferred stock securities (TOPrs) as an equity component of its capital structure was a litigated issue resolved in Southern Union's favor by the Commission in a previous case. As an alternative to reconsideration, Southern Union asks that the Commission rehear this matter.

On August 5, the Commission issued an Order directing Staff to respond to Southern Union's Application for Reconsideration or Rehearing. Staff filed its Response to Application for Reconsideration or Rehearing on August 12. In its response, Staff argues that the appropriate level of equity balances is a very relevant factor for the Commission to examine when considering the merger transaction proposed by Southern Union. Staff asserts that the level of equity balance is important in measuring the financial stability of a company before and after a proposed merger. Staff also takes the position that Southern Union's TOPrs are properly treated as a debt obligation rather than as an equity vehicle. Staff suggests that the condition in question not be removed from the order. Southern Union filed a reply to Staff's response on August 17.

The Commission's Order of July 29 approved Southern Union's request to purchase up to five percent of the outstanding shares of PNT. The other conditions requested by Staff, and imposed by the Commission's order, require Southern Union to take various actions necessary to ensure that information is available to Staff regarding the effects of this stock purchase and to ensure that the stock purchase does not harm Southern Union's customers. Southern Union does not challenge any of these conditions.

The condition that Southern Union does challenge is simply a definition clause. It seeks to define as debt, rather than equity, the TOPrs issued by Southern Union. The appropriate treatment of Southern Union's TOPrs may well be an important issue in Case No. GM-2000-43, in which the Commission will be called upon to approve or disapprove Southern Union's merger with PNT. However, that does not mean that this definition may appropriately be imposed upon Southern Union as a condition of the approval of its request to purchase a small portion of the stock of PNT in order to ensure the continued viability of the merger.

The Commission's Order of July 29 already approves the requested stock purchase so there is no need to define ownership equity for purposes of making that decision. Nothing in the Order or any of the other conditions requires that ownership equity be defined in this order. The Condition challenged by Southern Union has the

effect of imposing a definition of ownership equity upon Southern Union in a case where no such definition is necessary and no evidence has been offered regarding its appropriateness. The Commission can best determine an appropriate definition of ownership equity when this issue arises in a proper case and the Commission is able to collect competent and substantial evidence to support such a definition.

This order should not be taken to express any position on the appropriateness of the definition of ownership equity proposed by Staff. If Staff is concerned about equity ratios in the merger case, it may raise those concerns at that time. If the definition of ownership equity becomes a contested issue in that case, the Commission will decide the issue based upon the evidence and arguments of the parties. It will not seek to impose such a definition as a condition for its approval of the limited stock purchase plan proposed and approved in this case.

IT IS THEREFORE ORDERED:

1. That the Application for Reconsideration filed by Southern Union Company is granted.
 2. That ordered paragraph eight of the Commission's Order Approving Application with Additional Conditions is deleted from that Order.
 3. That this order shall become effective on August 24, 1999.
- Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crumpton, C. not participating

Woodruff, Regulatory Law Judge

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In the Matter of United Water Missouri Inc.'s Tariffs Designed to Increase Rates for Water Service

Case No. WR-99-326
Decided September 2, 1999

Evidence, Practice and Procedure §8. Rates §§8, 111, 121. The Commission approved the unanimous stipulation and agreement, finding the proposed rate increase and the rate design fair and reasonable. The stipulation and agreement approved proposed plan to implement a rate increase in two phases, approving a \$484,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective January 1, 2000, during the first phase and a \$267,000 rate increase in the overall Missouri jurisdictional gross annual water revenues, exclusive of specific taxes and fees, effective December 1, 2000, during the second phase.

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

United Water Missouri Inc. (UWM) submitted to the Commission tariffs reflecting a request for increased rates for water service to customers in Jefferson City, Cole County, Missouri, on February 2, 1999. The Commission suspended the tariffs submitted by UWM on February 18. The Commission directed any person who wished to intervene to file its application no later than March 10. The Commission also set an evidentiary hearing on August 16 through 21, 1999. On February 17, UWM filed its motion for protective order which was granted March 17.

On March 3, Staff of the Missouri Public Service Commission (Staff) filed its Motion to Establish Procedural Schedule requesting various procedural dates be set. On March 8, The 319 West Miller Corporation filed its application for intervention, which was granted on April 27. (The Commission granted The 319 West Miller Corporation leave to withdraw on July 26, 1999.) On March 9, the City of Jefferson (City) filed its application to intervene, which was granted on April 27. On March 18, the Office of the Public Counsel (Public Counsel) filed a request for local public hearings. After responsive pleadings were received, the Commission issued an order establishing a procedural schedule, granting intervention and setting the local public hearing on May 27, 1999.

On July 12, a prehearing conference was held. On July 23, UWM, Staff, Public Counsel, and the City filed a joint motion to suspend procedural schedule and a request to set a date for formal presentation of the stipulation and agreement. In their motion, the parties indicated that they had reached an agreement in principle and intended to file an unanimous stipulation and agreement in the near future. The parties also requested that the Commission set a hearing date on August 16, 1999, at 9:00 a.m., in the event the Commission required formal presentation on the stipulation and agreement. The joint motion was granted on July 30.

On August 5, the parties filed a Unanimous Stipulation and Agreement. The Unanimous Stipulation and Agreement stated that the parties agreed that UWM would revise its tariff sheets to produce a two-phase increase. The tariff will be designed to implement an increase in overall Missouri jurisdictional gross annual water revenues of Four Hundred Eighty Four Thousand Dollars (\$484,000), exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes, effective January 1, 2000. In the second phase, the tariff will be designed to produce an additional increase in overall Missouri jurisdictional gross annual water revenues of Two Hundred Sixty Seven Thousand Dollars (\$267,000), exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes, effective December 1, 2000. The parties also agreed that the total amount of the increases shall be applied to the water rates on an equal percentage to all classes, with the exception of Other (or Miscellaneous) Revenues. The stipulation and agreement also indicated that a true-up hearing is not necessary because of the parties' agreement that certain items of plant, known as Phase I of the Treatment Plant Upgrade project, have been completed and placed in service prior to June 30, 1999. The parties agreed that UWM shall notify its customers and Public Counsel of the new rates at least 30 days prior to the implementation of the second rate increase to occur on December 1, 2000. In the stipulation and agreement, the parties agreed to utilize the depreciation rates for accounts specified on Appendix A attached the Unanimous Stipulation and Agreement.

In addition to the rate increase, the parties agreed that UWM shall file tariff sheets revised to implement a requirement that UWM will provide maintenance for the portion of the service pipe located between the water main and the customer's property line effective January 1, 2000. The parties agreed that the company shall, at its own expense, be responsible for the maintenance of all service connections including the curb stop/valve and meter. If the company replaces the service connection, the company shall make the replacement at its own expense, and UWM shall become the owner of any such portions of the service pipe that it replaces. The stipulation and agreement also sets forth the agreement of the parties wherein UWM agrees to work with the City to address hydrant spacing issues and arrive at a mutually agreed upon fire hydrant placement program which will install approximately forty (40) new hydrants over the next five (5) years.

In the Unanimous Stipulation and Agreement, the parties also agreed that all of the prefiled testimony submitted by UWM, Staff, Public Counsel, and the City shall be received into evidence without the necessity of the respective witnesses taking the stand. The exhibits marked in this case include Exhibits 1 and 2, marked at the local public hearing which constitute written comments from the public and Exhibits 3 through 32 which are prefiled testimony exhibits and schedules filed by UWM, Staff, Public Counsel, and the City.

On August 11, Staff filed its confidential memorandum with the Commission serving all parties. Staff explained its rationale for entering into the Unanimous

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Stipulation and Agreement and supplied the Commission with supporting papers and calculations explaining the results of the Unanimous Stipulation and Agreement. The sample calculations included a comparison of what the outcome would have been had the Commission granted the requested rate increase compared to the stipulation and agreement rate increase.

On August 13, the Commission notified the parties that the formal presentation of the Stipulation and Agreement at hearing on August 16, 1999, would be necessary. The Commission also made specific requests for information related to the Unanimous Stipulation and Agreement and Staff's confidential memorandum filed in support of the Unanimous Stipulation and Agreement. During the hearing, the regulatory law judge informed the parties that the confidential memorandum filed by Staff in support of the Unanimous Stipulation and Agreement would be filed in the official case file and would become a part of the record. All parties at the hearing confirmed that they had already received a copy of this confidential memorandum and no further service was necessary. All parties had an opportunity to respond or object to the filing of the confidential memorandum and none was heard.

The Commission finds that the rate increase and rate design as set forth in the stipulation and agreement are fair and reasonable. Pursuant to Section 536.060, RSMo (1994), the Commission accepts the Unanimous Stipulation and Agreement as resolution of all of the issues in this case. The Commission further admits into evidence Exhibits 1 through 32 as evidence given consideration by the parties and the Commission in approving the Unanimous Stipulation and Agreement in this case. The Commission has reviewed the Unanimous Stipulation and Agreement, finds it to be reasonable and will approve it.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on August 5, 1999, by the parties, Attachment A to this order, is approved.
2. That United Water Missouri, Inc., shall submit its revised tariff sheets consistent with paragraphs 1 and 7 of the Unanimous Stipulation and Agreement within 30 days of the effective date of this order. Such tariffs shall have a minimum 30-day effective date. United Water Missouri, Inc., shall serve written notice upon the parties upon submission of its tariff sheets and shall provide copies of the tariffs to the parties immediately upon request.
3. That Exhibits 1 through 32 are admitted into evidence.
4. That the confidential memorandum filed by the Staff of the Commission on August 11, 1999, in support of the Unanimous Stipulation and Agreement, shall be filed with Records to be filed in the official case file.
5. That this case shall become effective on September 14, 1999.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crumpton, C., absent
Register, Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Joint Application of Western Resources, Inc.
and Kansas City Power & Light Company for Approval of the
Merger of Kansas City Power & Light Company with Western
Resources, Inc. and Other Related Relief.**

Case No. EM-97-515
Decided September 2, 1999

Evidence, Practice and Procedure §8, Electric §4. The Commission approved the stipulation and agreement, in which the parties agreed to the terms and conditions of the merger of Western Resources Inc and KCP&L. The Commission found the stipulation and agreement in the public interest and reasonable.

ORDER APPROVING STIPULATION AND AGREEMENT

On May 30, 1997, Kansas City Power & Light Company (KCP&L) and Western Resources, Inc. (Western Resources) filed their joint application for the approval of the merger of KCP&L with Western Resources. On June 17, 1998, Western Resources, Kansas Gas and Electric Company, KCP&L, and NKC, Inc. (Joint Applicants) filed their the First Amended Joint Application with the Commission. On February 4, 1999, the Commission established a procedural schedule in this case, which was later amended by the Commission. On July 12, the Joint Applicants along with the Staff of the Public Service Commission (Staff) and the Office of the Public Counsel (Public Counsel) notified the Commission that settlement negotiations were proceeding and that the hearing memorandum required to be filed by July 13 might be unnecessary. The Commission ordered the parties to file their Statement of Positions and ordered Staff to file the Statement of Issues no later than 3 p.m. on July 20 if their proposed stipulation and agreement had not been filed with the Commission by 3:00 p.m. on July 19. The hearing remained scheduled for July 26 through 30 and August 2 through 6, 1999.

On July 20, 1999, the Joint Applicants, Public Counsel, the Missouri Department of Natural Resources (Natural Resources), and the Staff filed a nonunanimous Stipulation and Agreement along with the Staff Motion To Late File Stipulation And Agreement. On July 21, Staff filed a notice to the non-signatory parties of the filing of the nonunanimous Stipulation and Agreement as required by 4 CSR 240-2.115(3).

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Pursuant to 4 CSR 240-2.115(3), each party had five (5) days from the receipt of the notice to file a request for hearing with the Commission. No request for hearing was received by July 26. Further, pleadings entitled Notice Of Position were filed by St. Joseph Light & Power Company, The Empire District Electric Company, UtiliCorp United Inc., Union Electric Company d/b/a AmerenUE, Aquila Power Corporation, GST Steel Company, City of Kansas City, and Kansas Electric Power Cooperative indicating that they neither agreed nor disagreed with the terms and conditions of the Stipulation and Agreement. These intervenors also stated that they neither support nor oppose the adoption by the Commission of the terms and conditions agreed to by the signatory parties to the Stipulation and Agreement and were not requesting a hearing. Since no party requested a hearing, the Commission will treat the Stipulation and Agreement as unanimous pursuant to 4 CSR 240-2.115.

On July 21, the Commission granted leave to the parties to file their Stipulation and Agreement out of time and suspended the procedural schedule. The Commission requested Staff file a memorandum explaining its rationale for entering into the proposed stipulation and agreement between the parties and giving the parties an opportunity to respond to the Staff's memorandum. The Commission also scheduled a hearing date for the presentation of the Stipulation and Agreement to the Commissioners for August 4 through 6, 1999, beginning at 9:00 a.m., in the event that a hearing would be required or requested by one of the parties. On July 28, Staff requested the Commission further amend the procedural schedule by extending the filing date by which Staff was required to file its memorandum explaining its rationale from July 30 to August 4. Staff also requested that the date of the hearing on the Stipulation and Agreement be moved from August 4 through 6 to August 17 through 19. On July 29, the Commission directed Staff to file its memorandum no later than 4:00 p.m. on July 30. Further, the Commission amended the procedural schedule and canceled the hearing on the Stipulation and Agreement that was set for August 4 through 6. The Commission indicated in its order that the formal presentation of the Stipulation and Agreement would be rescheduled if it were determined that a hearing was necessary. On July 30, Staff filed its memorandum as requested by the Commission.

The Stipulation and Agreement provides that the Commission should approve the merger and creation of Westar Energy, Inc. (Westar) as requested in the joint applicants' first amended application filed June 17, 1998. The Stipulation and Agreement also provides that, subject to the conditions and modifications set forth in the Stipulation and Agreement, the merger is not detrimental to the public interest and that the Stipulation and Agreement resolves all outstanding issues in this case. The parties have agreed that the amount of any asserted merger premium, i.e., the amount of the purchase price above the net book value, paid by Western Resources for KCP&L shall not be recoverable in rates. The parties further agreed that the Joint Applicants, including Westar, shall not seek to recover the amount of any asserted acquisition premium resulting from this transaction in rates in any Missouri proceed-

ing and the joint application should be considered amended on this issue. In addition, the parties agreed that Westar shall not seek to recover in Missouri the amount of any asserted acquisition premium in this transaction as being a “stranded cost” regardless of the terms of any legislation permitting the recovery of stranded cost from ratepayers. The parties further agreed that it is unnecessary to develop a post-merger savings quantification tracking mechanism with respect to the instant merger and that none shall be proposed in future proceedings in Missouri.

The Stipulation and Agreement also provides that the Joint Applicants, including Westar, shall not seek to recover the amount of any transaction cost in rates in any Missouri proceeding and agree to cooperate with the Staff and Public Counsel to identify such transaction costs to exclude them from rates in any Missouri rate proceeding. In the Stipulation and Agreement, the parties also agreed that the actual prudent and reasonable cost to achieve the merger shall be amortized over a ten (10) year period beginning on the date the merger closes and that the amount so recovered shall not exceed the amount of the Missouri jurisdictional portion of the total cost. The parties further agreed that the joint applicants, including Westar, shall not seek recovery of executive separation costs in any Missouri rate proceeding.

The Stipulation and Agreement further provides that in the event the merger is treated as a taxable transaction by the Internal Revenue Service (IRS), the Joint Applicants, including Westar, agree to make a rate base reduction on the books of Westar to fully compensate Missouri ratepayers for the loss of any deferred income taxes or deferred investment tax credits eliminated by the merger transaction so that there will be no financial detriment to Missouri ratepayers. The parties further agreed to file jointly with the Commission a “Conceptual Framework For A Generation And Transmission Cost Allocation Agreement” for Commission approval which addresses:

- (1) maintaining the current benefits of KCP&L’s low fuel cost for Missouri jurisdictional customers;
- (2) maintaining the current benefits of KCP&L’s present Missouri jurisdictional allocation method so as to retain the natural “allocation shift” which has been occurring from Missouri to Kansas, and
- (3) ensuring that if there is any future stranded cost recovery from KCP&L’s Missouri jurisdictional customers, it is based only on KCP&L’s current Missouri jurisdictional allocation method applied to the generating stations and plant that are to be assigned or allocated to KCPL Missouri jurisdictional portion by the Conceptual Framework for a Generation and Transmission Cost Allocations Agreement.

The parties stated in the Stipulation and Agreement that they contemplated that the Conceptual Framework For A Generation And Transmission Cost Allocations

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Agreement would be reached within 30 days of the signing of the Stipulation and Agreement. The parties filed the conceptual framework on August 24, 1999. The parties further agreed that within six months of the close of the merger, Westar shall meet with Staff and Public Counsel, as necessary, to discuss Westar's structure and organization and Westar's experience and progress respecting developing an Administrative and General (A&G) expense allocation methodology. The Stipulation and Agreement includes the specific agreements as to the allocation procedures and methods to be developed by Western Resources and Westar.

The Stipulation and Agreement further provides that the joint applicants, Staff and Public Counsel will jointly file with the Commission an agreement for Commission approval which establishes reasonable and appropriate customer service standards for Westar's Missouri customers before the issuance of the Commission's order approving this merger. The parties expected that the agreement relating to the reasonable and appropriate customer service standards would be filed within 30 days of the signing of the Stipulation and Agreement. The parties further agreed to locate the executive headquarters of Westar in Kansas City, Missouri, and employ the personnel necessary to meet and maintain reasonable and appropriate customer service standards in Westar's Missouri service area. The signatory parties filed the customer service standards agreement with the Commission on August 24. The Stipulation and Agreement further provides that Westar will continue to provide the Commission with annual surveillance reports on a total company and Missouri jurisdictional basis substantially similar to the annual surveillance reports currently provided by KCP&L.

The Stipulation and Agreement provides that a one-time credit to all Missouri retail electric customers (except special contract customers) shall be issued in the first billing cycle in the fourteenth calendar month following the closing of the merger. This one-time credit will total \$5,000,000 in the aggregate, exclusive of license, occupation, franchise, gross receipts, or similar fees or taxes. A notice to customers explaining the one-time credit will accompany the customer's bill on which the one-time credit appears.

The Stipulation and Agreement also provides that the signatory parties will be subject to a rate case moratorium period. In the Stipulation and Agreement, the signatory parties agree not to file any case with the Commission, or encourage or assist in filing any case with the Commission, requesting a general increase or decrease in Westar's Missouri retail electric rates, or rate credits or rate refunds respecting Westar's Missouri retail electric rates prior to the earlier of September 30, 2002, or 30 months after the closing of the merger, unless there is an occurrence of a significant, unusual event. Further, the signatory parties to the Stipulation and Agreement agree not to request, encourage or assist in any request, for a general increase or decrease in Westar's Missouri retail electric rates or rate credits or rate refunds respecting Westar's Missouri retail electric rates that would become effective for service rendered prior to March 31, 2003, or 36 months after the closing

of the merger, whichever occurs first. The signatory parties agree that Westar will not seek to defer plant addition costs, purchase power costs, or any other deferrals related to plant additions or purchase power costs other than those deferrals which KCP&L has at present or those specifically identified in the Stipulation and Agreement. The signatory parties agree that the Joint Applicants, including Westar, reserve the right to request that the Commission authorize the issuance of an accounting authority order (AAO) for extraordinary matters not related to plant additions or purchase power costs, and the other signatories to the Stipulation and Agreement reserve the right to oppose such requests for an AAO.

The Stipulation and Agreement provides that the joint applicants, including Westar and Western Resources, agree to make available to the Staff and Public Counsel all books and records and employees and officers of Western Resources and of any affiliate, including ONEOK, or of any subsidiary of Western Resources. The parties also agreed that Westar and any affiliate or subsidiary of Western Resources shall have the right to object to such production of records on the basis of any applicable law or Commission rules except an objection claiming that such records or personnel are not subject to the Commission's jurisdiction and statutory authority, including objections based on the operation of the Public Utility Holding Company Act of 1935 (PUHCA). Western Resources and Westar agree that they will assume the burden of proving the reasonableness of payments to or by Westar in connection with transactions with such affiliates in any proceedings before the Commission. The signatory parties agreed to continue voluntary and cooperative discovery practices and that Westar and Western Resources and each of their affiliates and subsidiaries agree to use accounting practices to protect against cross-subsidization of non-Westar businesses by Westar's retail customers.

The parties further agreed that contracts which are required to be filed with the Securities and Exchange Commission (SEC) pursuant to PUHCA or with the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act (FPA) may be filed but that neither Westar nor Western Resources nor any other affiliate or subsidiary will seek to overturn the decisions or orders of the Commission based upon the claim that the contract has been filed with, or approved by, the SEC or FERC or was incurred pursuant to the same method which was filed with or approved by the SEC or FERC. The parties further agreed that there will be no preapproval of affiliated transactions but that all filings with the SEC or FERC for affiliated transactions will be provided to the Commission and the Public Counsel. The signatory parties agreed that the Commission may make its determination regarding ratemaking treatment in a later ratemaking proceeding or a proceeding respecting an alternative regulation plan. The Stipulation and Agreement also provides for contingent jurisdictional stipulations, attached to the Stipulation and Agreement as Attachment B, regarding affiliated contracts required to be filed with the FERC or SEC to be used if a decision or order of the Commission is invalidated by a court of law.

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The Stipulation and Agreement provides for specific conduct by the parties depending upon future market power conditions related to horizontal market power, vertical market power, retail market power, and market power legislation. The Stipulation and Agreement provides that Westar will offer and maintain at least the same level of energy efficiency and weatherization service assistance programs offered by KCP&L in Missouri during the calendar year 1999 during the rate case moratorium period. The parties agreed that the moratorium period will also apply to any filing with the Commission for a change in Westar's Missouri electric rates pursuant to Section 393.292, RSMo (1994), related to funding for decommissioning the Wolf Creek nuclear plant.

The Stipulation and Agreement provides that Westar will continue to book an amortization totaling \$3.5 million annually until the Commission approves a change (1) upon agreement of the parties, or (2) in a general rate proceeding. Accumulated amortization balance booked pursuant to the Stipulation and Agreement, or the stipulation and agreements from Case Nos. ER-94-199 or ER-99-313, will be used as an offset to rate base in future rate proceedings of Westar, or its successors.

The parties agreed that the prepared testimony prefiled in this case may be received into evidence without the necessity of the witnesses taking the witness stand. Therefore, the Commission will admit into evidence Exhibits 1 through 46, which includes all of the prepared testimony as identified in paragraph 23 of the Stipulation and Agreement.

The Commission finds that approving the merger as requested in the Joint Applicant's First Amended Application filed June 17, 1998, subject to the conditions and modifications as set forth in the Stipulation and Agreement is not detrimental to the public interest. Pursuant to Section 536.060, RSMo (1994), the Commission may accept the Stipulation and Agreement as a resolution of the issues in this case. The Commission has reviewed the Stipulation and Agreement and verified application, as amended by agreement of the signatory parties, and finds the Stipulation and Agreement to be reasonable and in the public interest and will, therefore, approve it.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on July 20, 1999, by Western Resources, Inc., Kansas City Power & Light Company, the Office of the Public Counsel, the Missouri Department of Natural Resources, and the Staff of the Missouri Public Service Commission, Attachment A to this order, is approved.
2. That Exhibits 1 through 46 shall be admitted into evidence in this case.
3. That this order shall become effective on September 14, 1999.
4. That this case may be closed after September 15, 1999.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crumpton, C., absent
Register, Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Application of Timber Creek Sewer Company
for Permission, Approval and Certificate of Convenience and
Necessity Authorizing it to Construct, Own, Operate, Control,
Manage and Maintain a Sewer System for the Public Located
in an Unincorporated Area in Platte County, Missouri.**

Case No. SA-99-202
Decided September 2, 1999

Sewer §2. The Commission found that the application filed by Timber Creek for a certificate of public convenience and necessity authorizing Timber Creek to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Platte County, Missouri, should be granted.

APPEARANCES

Jeremiah D. Finnegan, Finnegan, Conrad, & Peterson, L.C., 1209 Penntower Office Center, 3100 Broadway, Kansas City, Missouri 64111, for Timber Creek Sewer Company.

James M. Fischer, James M. Fischer, P.C., 101 West McCarty Street, Suite 215, Jefferson City, Missouri, 65101 and *Robert H. Shaw*, McGinness & Shaw, P.O. Box 168, Marshall Road, Platte City, Missouri 64079, for the Platte County Regional Sewer District.

Mark W. Comley, Newman, Comley, & Ruth, 601 Monroe Street, Suite 301, Jefferson City, Missouri 65101, for the City of Kansas City, Missouri.

Shannon Cook, Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORYLAWJUDGE: Bill Hopkins, Senior Regulatory Law Judge

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REPORT AND ORDER

I. Procedural History

On November 5, 1998, Timber Creek Sewer Company (Timber Creek) filed an Application requesting that the Missouri Public Service Commission (Commission) grant it a certificate of public convenience and necessity to build and operate a sewer system for the public within a specified area of the unincorporated part of Platte County, Missouri (proposed service area).

On November 18, 1998, the Commission issued its Order and Notice, establishing an intervention date of December 18, 1998, for filing applications to intervene in this case. On December 17, 1998, the Platte County Regional Sewer District (Sewer District) and the City of Kansas City, Missouri (Kansas City) each filed timely applications to intervene which were subsequently granted by the Commission on December 29, 1998. The Sewer District and Kansas City both opposed the grant of the certificate to Timber Creek.

On February 18, 1999, the Commission issued an Order Establishing Procedural Schedule, which was corrected on February 19, 1999. Pursuant to the procedural schedule, Timber Creek filed its direct testimony on February 1, 1999. The Staff of the Missouri Public Service Commission (Staff), Sewer District, and Kansas City filed their rebuttal testimony on April 2, 1999. A prehearing conference was held on April 5, 1999. Surrebuttal testimony was filed by Timber Creek, Staff and the Sewer District on May 17, 1999. An evidentiary hearing was held June 14 and 15, 1999. All the parties were represented at the evidentiary hearing. On July 6, 1999, the Commission entered its order adopting briefing schedule, ordering, *inter alia*, that initial briefs should be filed on July 20, 1999, and reply briefs should be filed on July 30, 1999.

At the hearing, Exhibit Number 15 was reserved for a copy of the license of Timber Creek's CPA, William Everett. (Tr., p. 438). This number was subsequently used for another exhibit. On June 25, 1999, in a letter to the Commission, Timber Creek's attorney stated that "[w]ith respect to Late Filed Exhibit 17 (*sic*), Mr. Everett's CPA license, we have learned that...such [license] expired on September 7, 1997." On July 16, 1999, Timber Creek late-filed several exhibits: Exhibit Number 15 - Timber Creek's 1997 Annual Report; Exhibit Number 16 - Timber Creek's 1998 Annual Report; Exhibit Number 18 - a statement from Timber Creek's accountant; Exhibit Number 19a - a copy of Timber Creek's financial statement dated December 31, 1998; Exhibit Number 19b - a copy of Timber Creek's modified financial statement dated December 31, 1998. All the late-filed exhibits are received and made a part of the record of this matter.

On July 20, 1999, Staff, Kansas City, and the Sewer District each timely filed their initial briefs. On July 21, 1999, Timber Creek filed a motion for leave to file its initial brief out of time which is granted. On July 30, 1999, Staff, the Sewer District, and Timber Creek each timely filed their reply briefs.

II. Issues

The authority for the issuance by the Commission of a certificate of convenience and necessity to provide sewer service is contained in Section 393.170, RSMo¹. Subsection 1 of that statute states in part, “...No...sewer corporation shall begin construction of a...sewer system without first having obtained the permission and approval of the commission.” Subsection 3 of that statute states in part, “The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such...” convenience and necessity exists.

The courts have held that “necessity,” as used in the term “convenience and necessity,” does not mean essential or absolutely indispensable, but rather that an additional service would be an improvement justifying the cost and that the inconvenience to the public occasioned by the lack of a utility is so sufficiently great as to amount to a necessity. See *State ex rel. Public Water Supply District No. 8 v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Intercon Gas v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993), and *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

In *Re Tartan Energy*, 3 Mo.P.S.C.3d 173, 177 (Sept. 16, 1994) (*Tartan Energy Case*), articulated the legal standard to be met by applicants for a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest. See also *Re Intercon Gas, Inc.*, 30 Mo. P.S.C.(N.S.) 554, 561 (June 28, 1991); *State ex rel. Intercon Gas v. Public Service Commission*, *loc. cit.* This standard has also been historically applied to sewer certificate cases. See *Re M.P.B. Inc.*, 28 Mo. P.S.C. (N.S.) 55, 73 (November 15, 1985).

As discussed below, the Commission has determined that Timber Creek has met its burden of proof under the legal standards articulated by the Commission and the courts for the grant of a certificate of public convenience and necessity. For the reasons stated herein, the Commission will grant Timber Creek’s application for a certificate of public convenience and necessity.

III. Discussion

A. Timber Creek Sewer Company Proposal

Timber Creek is a Missouri corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at 1820 C Prairie View Road, P.O. Box 511, Platte City, Missouri 64079. It is a public utility proposing to render sewer service to the public under the jurisdiction of the Commission in an area adjacent to its presently certificated area. Timber

¹ All further statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

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Creek currently holds two certificates of authority issued by the Commission in case numbers SA-95-110 and SA-96-238. Timber Creek has provided service to the customers in those areas over the past few years, and currently serves about 175 customers in its Timber Park service area in Platte County, Missouri.

The proposed service area is within the Prairie Creek Watershed, as more specifically described in Exhibit No. 1, Schedule WCS-2. Timber Creek projects that initially there will be sixty (60) potential homes to be served in its proposed service area. Timber Creek's current service area consists of approximately 900 acres. The proposed service area lies south and west of the current service area, east of Prairie Creek and west of I-435, and is legally described as follows:

All of the following property in Platte County, Missouri, to wit:
In Township 52, Range 35: all of the East one-half of the Southeast Quarter of Section 1; all of the East one-half of Section 12 and all of the East one-half of the Southwest quarter of Section 12; and all of Sections 13 and 24; and in Township 52, Range 34: all of the South three quarters of Section 18 lying South of Timber Creek Sewer Company's existing service area and West of Interstate 435 Highway; and all of Section 19 lying West of Interstate 435 Highway.

All of the proposed service area lies within an area that has been designated as the Prairie Creek Watershed and consists of a total of about 10,000 acres. Timber Creek does not seek authority to serve those portions of the Prairie Creek Watershed that lie east of I-435, nor does it propose to serve the southernmost portions of the watershed.

The purpose of Timber Creek's application is twofold: (1) to provide sewer service under the regulation of the Commission in the proposed service area, which currently has no sewer service, regulated or unregulated; and (2) to expand its existing sewer treatment facilities by locating a new facility at the base of the watershed in order to provide treatment service for anticipated growth in Timber Park, to provide treatment service for development in Platte City under an agreement being negotiated with Platte City, and to serve anticipated customers in the proposed service area.

In its original Application and feasibility study, Timber Creek proposed moving a portion of its existing treatment plant to a new location in its proposed service area together with the construction of new equipment to initially provide 150,000 gallons per day (gpd) treatment capabilities and designed to allow expansion to 400,000 gpd. Under the original proposal, a portion of the existing treatment plant would remain in place and be converted into a wetwell and extraneous flow basin for a new pumping station to be built at the current location. The estimated cost of the new facilities and conversion was \$675,000.

Timber Creek modified its proposal in its surrebuttal testimony. Instead of recycling its existing 50,000 gpd plant and building a new 150,000 gpd plant, Timber

Creek proposed to construct a 100,000 gpd treatment plant and to continue utilizing its existing plant, thus being able to treat 150,000 gpd. Willis C. Sherry (Sherry), the President and Chairman of the Board of Timber Creek, testified that the \$675,000 figure for construction costs was still “valid and adequate....” (Tr., p. 52) Timber Creek did not amend its Application or submit a modified feasibility study to support its modified proposal.

B. Is there a need for service?

In the Hearing Memorandum filed on June 3, 1999 (Memorandum), Timber Creek, Staff, and the Office of the Public Counsel (OPC) all agreed that there was a public need for sanitary sewer service in the proposed service area. The Sewer District and Kansas City both agreed that there was no public need for sanitary sewer service in the proposed service area.

In his direct testimony for Timber Creek, Sherry stated that there was a public need for sanitary sewer service in the proposed service area. (Sherry, Direct Test., p. 6) The proposed service area is ripe for development and in order to tap the proposed service area’s potential as a quality residential and commercial area, such development would need adequate sewer service. (*Loc. cit.*)

Sherry stated that developers are building and planning to build residential homes and other establishments in the proposed service area and have contacted Timber Creek, requesting that Timber Creek provide sewer service in the proposed service area. (*Loc. cit.*) Sherry stated that presently there were about 25 single family dwellings with a population density of about 75 residents in the proposed service area. (Sherry, Id., Sch. WCS 3, p. 3) Sherry stated that Timber Creek had a request from D. R. Sherry Construction for service to about fifty single family residences to be built over the next three years in the proposed service area. (*Loc. Cit.*)

Martin Hummel, in his rebuttal testimony for the Staff, stated that there was a need for sewer service in the proposed service area and that he knew of no other entities ready and willing to provide such service. (Hummel, Rebuttal Test., p. 2)

William C. Carter, Jr. (Carter), the engineer for Timber Creek, in his surrebuttal testimony, stated that without the construction of the treatment plant and collecting facilities by Timber Creek, the proposed service area will not see much development. (Carter, Surrebuttal Test., p. 8) Carter noted that all utility services except sewer service are available in the proposed service area and, because of this lack, the area has not been developed. (*Loc. cit.*)

Michael P. Kalis (Kalis), the engineer for the Sewer District, in his rebuttal testimony, did not specifically testify concerning the public need for sanitary sewer service in the proposed service area. However, he cited the Sewer District’s master plan prepared for the Sewer District in 1995 by Burns and McDonnell Engineering Company, which “sets forth a conceptual long-term framework for the orderly development of sanitary sewers in the unincorporated [portions] of Platte County” by the Sewer District. (Kalis, Rebuttal Test., p. 2) In other words, Kalis testified that

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the Sewer District and not Timber Creek was the proper party to build the sewer service. For example, Kalis stated that Timber Creek's plans for the proposed service area were inadequate in that Timber Creek's plan to build a treatment plant with an initial capacity of 150,000 gpd would be unable to handle Timber Creek's projected customer load in the years 2000 and 2001. (Id., p. 5) Kalis stated that Timber Creek estimated 512 connections by the year 2000 and, at the average daily flow of 300 gpd, there would be a total 153,600 gpd flow. (*Loc. cit.*) Kalis stated that Timber Creek estimated 665 connections by the year 2001, with a total 199,500 gpd flow.

At the hearing, Kalis testified that the Sewer District had plans to build, by September 2000, a 250,000 gpd sewage treatment plant to serve the proposed service area. Kalis said that the Sewer District would not be trying to construct such a plant unless it thought there was a need for service in the proposed service area. (Tr., pp. 370–371, 375)

Sewer District witness Charles Reineke (Reineke), Executive Director of the Sewer District, at the hearing unequivocally testified on this issue that “[t]here is a need there if someone has put a plan together and has requested service, obviously there is a need.” (Tr., p. 318)

Mary A. Lappin (Lappin), in her rebuttal testimony for Kansas City, testified that there was no need for sewer service in the proposed service area. Lappin stated that “...it appears from the application and feasibility study [submitted by Timber Creek] that most, if not all, of the residences contemplated have yet to be constructed.” (Lappin, Rebuttal Test., p. 5, footnote omitted) Thus, concludes Lappin, if there are no residences, then “...it appears there are not sufficient customers to warrant expanding the certificated area [of Timber Creek].” (*Loc. cit.*)

The Commission finds that there is a need for sewer service in the proposed service area.

C. Is the applicant qualified to provide the service?

In the Memorandum, this issue was not addressed. The issue, however, was addressed in other pleadings and at the hearing.

Sherry testified in his direct testimony that he had been involved in the sewer business for eight years. (Sherry, Direct Test., p. 1) According to Sherry, the principal owners and operators of Timber Creek are primarily in the real estate business, developing residential subdivisions. (Tr., p. 73) Mr. Sherry is licensed as a real estate broker and his wife is licensed as a real estate salesperson. (Id., pp. 74-75) Sherry developed the Chez la Terra Subdivision and the Timber Creek Subdivision and is now actively planning the Timber Park subdivision. (Id., p. 73) Darrin Sherry, a son of Sherry's, is a part-owner of Timber Creek and also owns D. R. Sherry Construction, a real estate development company which is planning to develop the new D. R. Sherry Homes located in the proposed service area. (Id., pp. 79-80)

In 1995, Sherry stated, he formed Timber Creek due to the growth of the number of outlets on the sewer system serving Timber Creek Subdivision to more than

twenty-five, and, in that same year, filed for the first certificate of convenience and necessity to operate a regulated sewer corporation. (Sherry, Direct Test., p. 1) On May 18, 1995, in case number SA-95-110, Timber Creek was granted authority to serve two areas in Platte County, and on June 11, 1996, in case number SA-96-238, Timber Creek was granted additional authority to serve another area in Platte County adjacent to one of the areas previously authorized to serve. (Id., pp. 2–3) Timber Creek’s sewer system in its presently certificated areas meets all requirements of the Department of Natural Resources (DNR). (Id., p. 6) Sherry stated that all extensions or other plants required to serve the proposed service area would also be designed and built to meet all requirements of the DNR, as well as the requirements of the Commission, and the requirements contained in Timber Creek’s rules and regulations on file with the Commission. (*Loc. cit.*)

Timber Creek, which presently serves approximately 175 customers, is the only sewer company that Sherry owns. (Tr., p. 75) Based upon the record, it is clear that Sherry and his family are principally involved in the development of real estate, and operate Timber Creek on an ancillary basis to the Sherry family’s real estate businesses.

At the hearing, Carter testified that Timber Creek had adequate capacity to serve its current and projected needs in its existing service area. (Id., pp. 163-64) In fact, Timber Creek projects that it will have more than adequate capacity to serve its existing service area, at least through the year 2001. (Id., p. 164) According to Carter, at the current rate of development, Timber Creek would not reach its current plant capacity until sometime in the year 2001. (*Loc. Cit.*; Ex. No. 3, p. 2) Carter pointed out that the present 50,000 gpd treatment plant is averaging only 24,000 to 30,000 gpd, so Timber Creek has “another 20,000 gpd to go before it reaches capacity.” (Id., p. 153) As a result, Timber Creek could add at least eighty (80) more homes in its existing service area before it exceeded its existing treatment plant capacity. (Id., p. 153) In addition, Timber Creek could expand its existing capacity, if necessary, within its presently certificated area without obtaining additional authority from the Commission. (Id., p. 203)

No witness from the Sewer District or Kansas City testified directly on this issue. In fact, Kalis stated that the existing sewage treatment facilities at Timber Park were not undersized, that he had never known of DNR citing Timber Creek for any deficiencies, and that he had no reason to doubt that Timber Creek would add treatment capacity when it becomes necessary. (Id., p. 367)

The Commission finds that Timber Creek is qualified to provide the service.

D. Does the applicant have the financial ability to provide the service?

In the Memorandum, Timber Creek, Staff, and OPC all agreed that Timber Creek had the financial ability to provide the service. The Sewer District and Kansas City both agreed that Timber Creek did not have the financial ability to provide the service.

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The feasibility study that Timber Creek filed with its Application in this case revealed that Timber Creek expected to lose \$28,680 in 1998, and that it expected to lose money for each of the first three years during which it sought to serve the proposed service area. (Feasibility Study, Appendix 3) The projected losses shown in the feasibility study ranged from nearly \$11,000 per year to nearly \$16,000 per year. (*Loc. cit.*)

Timber Creek presently charges its residential customers a monthly service fee of \$16.50 per month (Tr., p. 69), which is substantially lower than the monthly service fees that the Sewer District would charge its customers in the same area, i.e., \$24.50 per month (Kalis, Rebuttal Test., p. 4)

Timber Creek subsequently filed with the Commission its revised annual reports for the most recent two years. Even though Timber Creek has sustained net losses in recent years, it appears that it has sufficient financial resources to carry out this project. According to the revised annual reports that Timber Creek filed with the Commission, Timber Creek had \$83,885 of cash on hand at the end of 1997 and slightly more — \$92,441 — at the end of 1998. Timber Creek sustained a net loss of \$2,699 during 1997 and a net loss of \$2,491 during 1998.

Timber Creek's small losses in recent years do not pose a serious threat to the financial ability of Timber Creek to serve the proposed service area. The Commission notes that Timber Creek has at its discretion regulatory avenues to correct this situation whenever it deems necessary.

The Commission finds that Timber Creek has the financial ability to serve the proposed service area.

E. Is the applicant's proposal economically feasible?

The Sewer District's master plan includes the construction of treatment facilities to serve the Prairie Creek Watershed, a portion of which Timber Creek is seeking to serve in this proceeding. Likewise, Reineke testified that the Sewer District has plans to provide service in all of the Prairie Creek Watershed (Tr., p. 349), including the area that Timber Creek proposes to serve. (Ex. No. 9, Sch. MPK-2)

The Sewer District's proposed sewage plant is somewhat larger than but similar in concept to the plant Timber Creek proposes. The Sewer District, by advancing this proposal, necessarily implies that it finds the construction of its 250,000 gpd sewage treatment plant feasible. In Kalis' rebuttal testimony, the Sewer District stated that this plant would cost \$1,700,000, i.e., \$6.80 per gpd. (Kalis, Rebuttal Test., p. 5) Timber Creek's proposal, as stated above, was for building a 150,000 gpd sewage treatment plant at the cost of \$675,000, i.e., \$4.50 per gpd. If the Sewer District's proposal is feasible, then there is no basis for concluding that Timber Creek's proposal to construct a smaller plant, at a lower cost per gpd, is not also feasible.

The Commission finds that Timber Creek's proposal is economically feasible.

F. Does the applicant's proposal promote the public interest?

The foregoing discussion demonstrates that the Timber Creek application in this case satisfies the requirements of each of the first four tests in the *Tartan Energy Case*.

"Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest." *Tartan Energy Case*, 189.

However, there are other factors to consider in determining whether granting the certificate will promote the public interest, because the Sewer District is also offering to provide its services to the customers in the proposed service area.

The Sewer District and Kansas City contend that Timber Creek cannot be trusted to remain in the sewer collection business because it is affiliated with a real estate developer and that it will exit the sewage treatment business as soon as its real estate development objectives are achieved. (Sewer District, Initial Brief, pp. 8–10; Kansas City, Initial Brief, p. 1) There is no evidence to support this claim. Sherry directly contradicted the contention when he testified that he expects to continue to serve as president of Timber Creek for "five, ten or 15 years," and that he expects his sons to continue to operate the business after that. (Tr., p. 78)

Timber Creek recognized the need for sewage treatment services in the area more rapidly than the Sewer District did, and filed applications to serve the area more than three years ago. The Sewer District has been indecisive on whether there was a need for service at all. The Sewer District stated in the Hearing Memorandum and in its briefs that there is no need for service, even though one of its witnesses, Kalis, testified that there is a need for service and that the Sewer District therefore plans to complete construction of a new sewage treatment plant for the area by September of the year 2000. (Id., pp. 370–371)

Timber Creek has also been able to provide service to its customers at a lower monthly fee, and with lower connection fees than those charged by the Sewer District. This is because, as discussed above, the construction of the Sewer District's treatment facilities costs approximately \$6 per gpd, whereas the construction of Timber Creek's facilities costs approximately \$4 per gpd. Kalis attributes the Sewer District's higher construction costs to redundancy of equipment, materials of construction, and a number of other items. (Id., p. 403)

The Commission finds that Timber Creek's proposal promotes the public interest.

IV. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission

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has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. The Commission finds that there is a need for sewer service in the proposed service area.
2. The Commission finds that Timber Creek is qualified to provide the service.
3. The Commission finds that Timber Creek has the financial ability to serve the proposed service area.
4. The Commission finds that Timber Creek's proposal is economically feasible.
5. The Commission finds that Timber Creek's proposal promotes the public interest.

V. Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

1. Timber Creek is a public utility and a sewer corporation subject to the Commission's jurisdiction under section 386.250, RSMo, and section 393.170, RSMo.
2. There is a need for sewer service in the service area that Timber Creek proposes to serve.
3. Timber Creek is qualified to provide the proposed service.
4. Timber Creek has the financial ability to provide the service.
5. Timber Creek's proposal to serve the proposed service area is economically feasible.
6. Timber Creek's plan to serve the proposed service area will promote the public interest.
7. Timber Creek's proposal satisfies all of the criteria enunciated in the *Tartan Energy Case* as set forth above, and the proposal should be granted.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 15, 16, 17, 18, 19a, and 19b are hereby received into the record.
2. That Timber Creek Sewer Company's motion for leave to file its initial brief out of time is granted.
3. That the Application filed by Timber Creek Sewer Company for a certificate of public convenience and necessity authorizing Timber Creek to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Platte County, Missouri, as more fully described in its Application, is hereby granted.

4. This Report and Order shall become effective on September 14, 1999.
5. That this case may be closed on September 15, 1999.

Lumpe, Ch., Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Murray, C., dissents with opinion. Crumpton, C., absent.

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I would deny the Application. Applicant has not met its burden to show financial capacity. Furthermore, I am unpersuaded by Applicant's allegation of need for service.

In the Matter of the Laclede Gas Company's Tariff Sheets to Extend and Revise the Company's Gas Supply Incentive Plan.*

*Case No. GT-99-303
Decided September 9, 1999*

Gas § 17.2. The Commission rejected the company's proposed tariff sheets that were filed to extend and revise the company's Gas Supply Incentive Plan (GSIP II). However, the Commission authorized the company to file tariff sheets to implement a modified GSIP II for a one-year term. The modifications directed by the Commission include changes to provisions regarding gas procurement, off-system sales, capacity release, pipeline discount, and mix of pipeline services.

APPEARANCES

Michael E. Pendergast, Associate General Counsel, and *Thomas M. Byrne*, Associate Counsel, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Edward F. Downey, Bryan Cave LLP, 221 Bolivar Street, Suite 101, Jefferson City, Missouri 65109, for Adam's Mark Hotels, Alcoa Foil Products (Alumax, Inc.), Anheuser-Busch Cos., Inc., The Boeing Company, Ford Motor Company,

*See page 346 for another order in this case. The Commission, in an order issued on November 2, 1999, denied a request for clarification. In an order issued on November 4, 1999, the Commission denied an application for rehearing in this case.

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General Motors Corporation, Hussmann Refrigeration, MEMC Electronic Materials, Inc., Monsanto Company, Paulo Products Company, Procter & Gamble Manufacturing Company, and Ralston Purina Company, collectively known as the “Missouri Industrial Energy Consumers” or “MIEC”.

Robert J. Hack, Vice President, Pricing and Regulatory Affairs, Missouri Gas Energy, 3420 Broadway, Kansas City, Missouri 64111, for Missouri Gas Energy, a division of Southern Union Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Thomas R. Schwarz, Jr., Deputy General Counsel, and *Bruce H. Bates*, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Vicky Ruth.

REPORT AND ORDER

Background

Laclede Gas Company (Laclede) currently has an experimental Gas Supply Incentive Plan (GSIP), which was recommended to the Commission by Laclede, the Staff of the Missouri Public Service Commission (Staff) and several other parties as part of the Stipulation and Agreement filed in the Company’s 1996 general rate case proceeding, Case No. GR-96-193. The plan was approved on an experimental basis for a three-year term to begin on October 1, 1996, and expire on September 30, 1999. The decision now before the Commission is whether to allow Laclede to extend the GSIP, and if so, with what modifications and for what term.

Procedural History

On January 14, 1999, Laclede filed a tariff with the purpose of extending and revising the Company’s GSIP for an additional three years. Laclede also requested that the Commission establish an expedited procedural schedule.

On January 25, 1999, Staff filed a Motion for Procedural Schedule and for Protective Order. Staff proposed a procedural schedule which established hearing dates of July 26-30, 1999. Also on January 25, the Office of the Public Counsel (Public Counsel) filed a Response in Opposition to Laclede Gas Company’s Request to Establish an Expedited Procedural Schedule.

On January 28, 1999, Staff filed a Memorandum regarding the tariff filed to extend the GSIP. Staff noted that these tariff sheets would allow the company to leave a GSIP in place for three more years, through September 30, 2002. Staff recommended that these proposed tariff sheets be suspended for a period of at least six months beyond the requested effective date of February 14, 1999.

Laclede filed a response to the procedural schedule recommendations of Staff and Public Counsel on February 2, 1999. Staff filed a response to this document on February 4, 1999, and Public Counsel did so on February 8, 1999. The Commission issued an order on February 10, 1999, which suspended the tariff sheets for 120 days, to June 14, 1999, granted a protective order, and denied the motion for expedited procedural schedule.

On February 19, 1999, Laclede filed a Motion for Prompt Approval of Laclede Gas Company's Proposed Price Stabilization Program and a One-Year Extension of Laclede's Existing Gas Supply Incentive Plan, and a Request for an On-the-Record Presentation. Public Counsel filed a response in opposition on March 2, 1999, and Staff did so on March 5, 1999. Laclede filed a response to Staff's reply on March 15, 1999. The Commission issued an order Granting Intervention, Denying Motion for On-the-Record Presentation and Amending Procedural Schedule on April 13, 1999.

The Commission issued a Order Directing Notice on June 7, 1999, setting an intervention deadline of June 28, 1999. The Commission granted intervention to the following parties: Missouri Industrial Energy Consumers (MIEC), Missouri Energy Group,¹ and Missouri Gas Energy (MGE). On July 26, 1999, Missouri Energy Group requested that it be dismissed from the proceeding, and the Commission later granted this request. None of the intervenors offered evidence at the hearing.

A hearing was held on July 22-23 and July 26-27. Initial briefs were filed on August 16 and reply briefs were filed on August 25.

Discussion

The current GSIP has a three-year term, and consists of four main components: procurement of gas supplies; off-system sales; capacity release; and pipeline discount. These components, and the parties' proposed modifications, are discussed below.

I. Procurement of Gas Supplies

A. Current GSIP

Under the first component, the procurement of gas supplies, the actual cost incurred by Laclede to obtain its gas supplies is measured against a benchmark cost of gas that is based on a weighted average first-of-the-month index of spot gas prices, plus a 3.2 percent incremental amount to reflect the cost of reserving these supplies. If the company outperforms this benchmark, it is allowed to retain

¹Missouri Energy Group consists of the following: Barnes-Jewish Hospital, DaimlerChrysler Corporation, Emerson Electric Company, SSM HealthCare, and Unity Health Systems.

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one-half of the resulting savings subject to an overall floor equal to 94 percent of the benchmark. However, if the company's costs exceed the benchmark by more than 4 percent, it must absorb 50 percent of such excess costs up to 110 percent of the benchmark.

B. Laclede's Proposal

Laclede proposes to modify the existing Gas Procurement Component by incorporating a fixed demand charge into the gas procurement benchmark in place of the current "percentage index" demand charge. The fixed demand charge would be established each year by a Request for Proposal (RFP) process which would enable the company to assess the market costs of reserving baseload, swing and combination supplies in each of the producing regions where it purchases gas supplies. Laclede would exclude only the highest 10 percent priced volumes received during the bidding process for purposes of calculating the benchmark (rather than both the highest and lowest 10 percent priced volumes as originally proposed). Laclede would calculate a weighted average of the remaining bids as the fixed demand cost component. Laclede argues that as so modified, the GSIP will continue to provide a powerful incentive for the company to minimize the cost of gas supplies, but the company's share of the savings will no longer increase or decrease with the index price of gas supplies.

Laclede also proposes to add a firm Fixed Price Component. Under this provision, to the extent that Laclede enters into firm fixed price contracts with a price equivalent to or lower than both a) the historical five-year average of gas prices for the applicable winter or summer period; and b) the current market price prevailing during the month or months for which the gas was purchased, the company would share in the savings. Laclede's share of the savings would be based on a sliding scale that begins at 10 percent and increases to a maximum of 50 percent for savings in excess of \$.40 per MMBtu. Gas volumes covered by the firm fixed price contracts would be excluded from the Gas Procurement Component of the plan.

Furthermore, Laclede indicated its willingness to modify this component further so that Laclede would be required to absorb 10 percent of the losses and be permitted to retain only 10 percent of the gains associated with its use of firm fixed price contracts, as the Commission prefers. Laclede alleges that this would provide a moderate and balanced set of risks and rewards that would provide the company with a realistic opportunity to use firm fixed price contracts as a part of its gas supply portfolio. Public Counsel indicated that it would accept Laclede's recommendation to modify the sharing percentages to 10 percent of the benefit and detriment of use of fixed price contracts.

C. Public Counsel's Proposal

Public Counsel believes that it is inappropriate to allow Laclede to obtain financial benefits from contracts resulting from a competitive bidding process and referenced to spot market indices. Public Counsel argues that Laclede should not be given an

incentive for items over which it does not reasonably exercise control, and emphasizes that Laclede neither controls the competitive market response to its bidding process nor the spot market rate after execution of the contract.

Public Counsel recommends that the traditional PGA/ACA² process be utilized for competitive bid contracts referenced to the volatile spot market indices. Public Counsel also recommends that Laclede be given an incentive to enter into fixed price and option contracts for its gas supply; in these situations, Laclede determines its involvement in the design, timing, and amount of activities intended to mitigate market volatility and escalating gas costs. Public Counsel recommends that ratepayers and Laclede share equally in the financial benefits and detriments associated with fixed and option contracts.

D. Staff's Proposal

Staff suggests a fixed price natural gas commodity cost whereby that price will be set based upon consideration of Laclede's historical gas costs and NYMEX future prices, historical demand and swing service premiums, and historical costs for lost and unaccounted-for gas.

Public Counsel indicated that it is willing to modify its proposal to include the caps recommended by Staff witness Busch in his rebuttal testimony.

II. Off-System Sales

A. Current GSIP

The second component is the Off-System Sales Component, which pertains to the off-system sales of gas to nonjurisdictional customers who are located "off" the company's system. The existing GSIP provides that the company receives 30 percent of the net revenues and the customers receives 70 percent, beginning with the first dollar of off-system sales revenue.

B. Laclede's Proposal

In response to concerns voiced by other parties, Laclede suggests modifying this component by recognizing an aggregate baseline amount of \$2.0 million in combined revenues from both off-system sales and capacity releases, provided that Laclede is permitted to retain 50 percent of any revenues it achieves which exceed this baseline amount.

C. Public Counsel's Proposal

Public Counsel believes that a certain amount of off-system sales are inherent in Laclede's mix of pipeline services, and that Laclede has not demonstrated any new or innovative initiatives in the area of off-system sales that have resulted from the implementation of the GSIP. Therefore, Public Counsel recommends modifying this component so that in lieu of Laclede's proposed experimental incentive for off-

² PGA/ACA refers to the Purchased Gas Adjustment/Actual Cost Adjustment procedure generally used in the natural gas industry to permit interim adjustments for gas price changes.

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system sales, \$2.4 million should be included in revenue for off-system sales when determining rates in the current rate case, Case No. GR-99-315. Under this plan, Laclede would receive a dollar-for-dollar financial benefit if net off-system sales exceed \$2.4 million. However, if Laclede didn't at least achieve its historical average, it would incur financial detriment. Public Counsel argues that including net off-system sales revenues in base rates provides a reasonable balance between the company's interests and the ratepayers' interests.

Public Counsel states that in the alternative, should the Commission wish to maintain Laclede's current off-system sales GSIP structure, Public Counsel recommends that Laclede be allowed to retain 30 percent of the net off-system sales revenues in excess of \$2.4 million.

D. Staff's Proposal

Staff proposes a historical, baseline amount of off-system sales that will be included as an offset to transportation rates. If Laclede achieves greater off-system sales than the historical amount, it keeps all revenues from such sales.

III. Capacity Release Component

A. Current GSIP

The current GSIP provides that revenues derived from the release of pipeline transmission or storage capacity were to be shared as follows:

Capacity Release Revenues	Company Percent	Customer Percent
First \$1,500,000	10%	90%
From \$1,500,000 - \$2,500,000	20%	80%
Over \$2,500,000	30%	70%

B. Laclede's Proposal

In order to address concerns of Staff and Public Counsel, Laclede stated that it is willing to impute an aggregated baseline of \$2.0 million in combined revenues from off-system sales and capacity release, provided that it is permitted to retain 50 percent of any capacity release revenues it achieves which exceeds the baseline.

C. Public Counsel's Proposal

Public Counsel's arguments for modifying this component are similar to its arguments for modifying the Off-System Sales Component. Public Counsel believes that a certain level of capacity release revenues are inherent in Laclede's current mix of pipeline services, and that Laclede has not demonstrated any new or innovative initiatives in the area of capacity release as a result of the capacity release component of the current experimental GSIP.

Public Counsel recommends that, instead of Laclede's proposal, \$3.3 million should be included as revenue for capacity release when determining rates in Laclede's current rate case, Case No. GR-99-315. Under Public Counsel's proposal,

Laclede would receive a dollar-for-dollar financial benefit if net capacity release revenues exceed \$3.3 million. However, Laclede would be subject to financial detriment if it cannot achieve the \$3.3 million level of capacity release revenues. Public Counsel argues that including capacity release revenues in base rates provides a reasonable balance between the company's interests and the ratepayers' interests.

Public Counsel proposes an alternative plan should the Commission desire to retain the structure of the current GSIP for the capacity release component. In this plan, Laclede would keep 30 percent of capacity release revenues in excess of \$3.3 million.

D. Staff's Proposal

Staff includes an historical baseline amount for capacity release in its calculation as an offset to transportation rates. If Laclede achieves capacity releases greater than the historical average, it will retain all such revenues.

IV. Pipeline Discount Component

A. Current GSIP

The current GSIP provides that discounts negotiated with interstate or intrastate pipeline companies for firm transportation services were to be shared, starting with the first dollar, as follows:

- 10 percent of the difference between actual pipeline costs and the maximum authorized rates after December 1, 1995;
- 20 percent of the difference between actual pipeline costs and maximum authorized rates after October 1, 1996, for contracts finally negotiated and executed subsequent to such date.

B. Laclede's Proposal

In order to address criticisms of Staff and Public Counsel regarding this component, Laclede indicated that it is willing to build in a baseline level of pipeline discount of \$13 million which it must exceed prior to retaining any share of discounts. In return, Laclede must be permitted to retain 50 percent of the discounts achieved in excess of the baseline. Laclede noted that the \$13 baseline is based on the average discounts received by shippers from the pipelines utilized by Laclede.

C. Public Counsel's Proposal

Public Counsel recommends that the Commission eliminate this component of the GSIP. Public Counsel argues that this is appropriate because of Laclede's strong negotiating position and due to existing pipeline rate structures. In addition, Public Counsel alleges that the experimental GSIP has not caused Laclede to undertake any new or innovative initiatives in the area of pipeline discounts. Public Counsel believes that Laclede would achieve the same or similar levels of pipeline discounts without the GSIP.

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Public Counsel recommends that prudently incurred pipeline service costs be passed through dollar-for-dollar to ratepayers under traditional PGA/ACA process. Public Counsel argues that continuation of Laclede's pipeline discount component is not a reasonable balance of ratepayer and shareholder interests.

D. Staff's Proposal

Staff sets transportation costs based on Laclede's contracted FERC or MPSC rates; the rate will include costs for pipeline fuel and storage. The price to Laclede's customers will be adjusted by a deferred account for take-or-pay or gas supply restructuring surcharges and pipeline refunds. Laclede's actual volumes would be adjusted to reflect differences between the actual temperatures and normalized temperatures (using a thirty-year normal) and for customer growth.

V. Mix of Pipeline Services

A. Current Proposal

The current GSIP does not contain this component.

B. Laclede's Proposal

This component puts the company at risk or allows the company to share in savings if the alteration of mix of pipeline services leads to increased or decreased cost for customers. Laclede states that this component should eliminate any incentive for the company to engage in uneconomic substitution.

C. Public Counsel's Proposal

Public Counsel opposes this proposal as it does not believe that it is appropriate to provide Laclede a financial benefit for simply substituting one supplier or service for another based upon capacity availability and differences in pipeline rate structures. Public Counsel further argues that Laclede should not be given a financial benefit simply because of its historical dependence on certain pipeline suppliers or services.

Public Counsel recommends that Laclede's mix of pipeline services remain subject to the traditional PGA/ACA process with prudently incurred costs being passed through to ratepayers on a dollar-for-dollar basis.

D. Staff's Proposal

Staff proposes no adjustment for changes in Laclede's contracted maximum daily quantity (MDQ). Staff states that demand charges for transport would be calculated based on current level of MDQs and not adjusted for interim changes.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that the establishment of a modified Gas Supply Incentive Plan (referred to as the GSIP II) is in the public interest. However, the Commission determines that the proposals offered by the parties are unacceptable without additional modification. Furthermore, the Commission will approve the implementation of a one-year term only. This shortened time frame will allow the Commission to monitor any action that the Missouri Legislature may take during the year 2000 in the area of energy deregulation.

If Laclede does not want to implement the GSIP II as modified by the Commission, it may instead return to the traditional PGA/ACA process once the current GSIP expires on September 30, 1999.

Gas Procurement

The Commission has reviewed the evidence and determines that Laclede's proposal to establish a fixed demand cost component which won't be affected by movement in gas prices is reasonable and shall be approved for incorporation into a modified GSIP II. This proposal incorporates a fixed demand charge into the gas procurement benchmark in place of the current "percentage index" demand charge. Fixed demand charge would be established each year by a Request for Proposal (RFP) process whereby Laclede would exclude the highest 10 percent priced volumes received during the bidding process. Laclede would calculate a weighted average of the remaining bids as the fixed demand cost component.

Laclede also proposed to add a firm Fixed Price Component where its share of the savings would vary from 10 percent to 50 percent for savings in excess of \$.40 per MMBtu. Gas volumes covered by the firm fixed price contracts would be excluded from the Gas Procurement component of this plan.

Off-System Sales

The Commission determines that Public Counsel's position regarding off-system sales has some merit. Public Counsel recommended that in lieu of Laclede's proposed experimental incentive for off-system sales, \$2.4 million should be included in revenue for off-system sales when determining rates in the current rate case, Case No. GR-99-315. Public Counsel argued that including net off-system sales revenues in base rates provides a reasonable balance between the company's interests and the ratepayers' interests. The Commission finds that this component should be removed from the GSIP II and instead should be addressed in Laclede's current rate case, Case No. GR-99-315. At this time, the Commission makes no finding regarding whether the figure \$2.4 million is the appropriate amount.

Capacity Release

As previously noted, Laclede's Capacity Release proposal established a baseline amount of \$2 million in combined revenues from off-system sales and capacity release, with Laclede retaining 50 percent of any capacity release or off-system sales revenues it achieves in excess of the baseline. Since the Commission is unwilling to

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include off-system sales in the GSIP II, a baseline composed of combined revenues from off-system sales and capacity release is not appropriate. Furthermore, there is insufficient evidence for the Commission to select a different baseline amount for capacity release only. Therefore, the Commission finds that it is appropriate to continue the capacity release component in its current form. Thus, revenues derived from the release of pipeline transmission or storage capacity are to be shared as follows:

Capacity Release Revenues	Company Percent	Customer Percent
First \$1,500,000	10%	90%
From \$1,500,000 - \$2,500,000	20%	80%
Over \$2,500,000	30%	70%

Pipeline Discount

The Commission finds that, with a modification of the percentage figure, Laclede's proposal regarding this component is reasonable. The Commission agrees that the establishment of a baseline level of \$13 million is appropriate. Although the Commission finds that a sharing mechanism of 50 percent is excessive, it does recognize that in exchange for the establishment of a baseline level, Laclede should be allowed to retain a slightly higher percentage than the current sliding scale of 10 percent to 20 percent. Therefore, the Commission will allow Laclede to retain 30 percent of the difference between the actual pipeline costs and the maximum authorized rates once the baseline amount has been met.

Mix of Pipeline Services

The Commission finds that Laclede's proposal regarding the mix of pipeline services is reasonable and in the public interest and should be approved.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Laclede is a regulated public utility over which the Commission has jurisdiction in accordance with Chapters 386 and 393, RSMo 1994. The Commission must protect the public interest, ensure that Laclede's rates are just and reasonable, and ensure that Laclede provides safe and adequate service to the public. §§ 393.130 and 393.140, RSMo 1994.

Orders of the Commission must be based upon competent and substantial evidence on the record. § 536.140, RSMo 1994. Based upon its findings of fact, the Commission concludes that a GSIP modified to comply with this order would be in the public interest.

IT IS THEREFORE ORDERED:

1. That the proposed tariff filed by Laclede Gas Company on January 14, 1999, is rejected.
2. That Laclede Gas Company is authorized to implement a modified Gas Supply Incentive Plan (GSIP II) which is consistent with the modifications directed by the Commission in this order. This plan shall be effective for a one-year term of October 1, 1999, to September 30, 2000.
3. That Laclede Gas Company shall file, by September 14, 1999, either (a) a revised tariff implementing a modified Gas Supply Incentive Plan (GSIP II) which is consistent with this order; or (b) a notice that Laclede elects to return to the traditional PGA/ACA process once the current experimental Gas Supply Incentive Plan expires on September 30, 1999.
4. That if Laclede Gas Company files revised tariff sheets implementing a modified Gas Supply Incentive Plan (GSIP II), Staff shall file, by September 20, 1999, a report which states whether or not the company's revised tariff complies with this Report and Order.
5. That any pending motions or objections not specifically ruled on in this order are hereby denied or overruled.
6. That this Report and Order shall become effective on September 21, 1999.

Lumpe, Ch., Crumpton, Drainer, and Murray, concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Schemenauer, C., absent.

In the Matter of the Application of Kansas City Power & Light Company for Approval to Name Successor Trustee for its Tax Qualified Nuclear Decommissioning Trust Fund, for Approval of Trustee Fee Schedule, and to Modify the Amended and Restated Trust Agreement.

Case No. EO-2000-2
Decided September 21, 1999

Electric §45. The Commission approved The Bank of New York as successor trustee for an electric utility's tax qualified nuclear decommissioning fund.

ORDER APPROVING APPLICATION

Kansas City Power & Light Company (KCPL) filed an application on July 1, 1999, for approval of:

- (1) The Bank of New York as successor trustee for its tax qualified nuclear decommissioning trust fund;

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- (2) A trustee fee schedule; and
- (3) An amendment to the Amended and Restated Trust Agreement so that it incorporates the changes requested in the application.

The application indicates that the changes are necessary because the existing trustee, Bankers Trust Company, has notified KCPL that it is resigning as trustee. KCPL is obligated under the terms of the Trust Agreement to appoint a Successor Trustee once the current Trustee has provided written notice of its resignation.

On September 3, the Staff of the Public Service Commission (Staff) filed a memorandum indicating that Staff has reviewed KCPL's criteria for choosing a successor trustee. Staff finds that The Bank of New York is an appropriate successor trustee. Staff also states that the revised fee schedule is appropriate. Staff's memorandum concludes that "Staff finds no reason to believe that the proposed changes will result in any detriment to the public interest or the ratepayers of Kansas City Power & Light Company." Staff recommends approval of KCPL's application.

The Commission has considered KCPL's application and the memorandum of Staff and concludes that KCPL's application should be granted.

IT IS THEREFORE ORDERED:

1. That The Bank of New York is approved as successor trustee for Kansas City Power & Light Company's tax qualified nuclear decommissioning fund.
2. That the Amendment to the Amended and Restated Trust Agreement, submitted by Kansas City Power & Light Company as Exhibit C to its application, is approved.
3. That the revised trustee fee schedule submitted by Kansas City Power & Light Company is approved.
4. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the changes authorized by this order.
5. That the Commission reserves the right to consider any ratemaking treatment to be afforded the changes herein involved in a later proceeding.
6. That this order shall become effective on October 1, 1999.
7. That this case may be closed on October 4, 1999.

Crompton, Murray, Schemenauer, and Drainer, CC., concur
Lumpe, Ch., absent
Woodruff, Regulatory Law Judge

In the Matter of the Petition of ALLTEL Telephone Company for Approval of an IntraLATA Toll Dialing Parity Plan*

Case No. TO-99-497

Decided September 21, 1999

Telecommunications §33. The Commission allowed a local exchange company to modify the notices they were ordered to provide to customers concerning intraLATA toll dialing parity.

ORDER REGARDING PETITION FOR MODIFICATION

On September 10, 1999, ALLTEL Missouri, Inc. (ALLTEL) filed a petition for modification of its IntraLATA Dialing Parity (ILDLP) plan. ALLTEL stated that it wanted to modify its ILDP plan because the plan it proposed and the Commission approved would assign customers who did not choose a primary interexchange carrier (PIC) for intraLATA toll service to their interLATA carrier, and because AT&T is the interLATA PIC for many of its customers. ALLTEL stated that, under the plan it proposed, it is concerned that a number of customers might be defaulted to a 101XXXX dialing pattern. On September 16, 1999, ALLTEL amended its petition for modification. ALLTEL requested that the Commission allow it to modify its plan so that customers who have not chosen a primary interexchange carrier (PIC) for intraLATA toll service by October 20, 1999, will be assigned to its long distance affiliate (ALLTEL Communications, Inc.) rather than to their interLATA carrier, unless their interLATA has specified that it will be an intraLATA carrier. ALLTEL also requested that the Commission authorize it to send a notification letter (a copy of which it attached to its petition) explaining the modification to its customers.

A number of secondary carriers (SCs) proposed ILDP plans that assigned customers who did not choose a PIC to a long distance affiliate of the SC, and the Commission approved these plans. (See, *e.g.*, TO-99-514, In the Matter of the Petition of Mark Twain Rural Telephone Company for Approval of an IntraLATA Dialing Parity Plan.) ALLTEL's proposed modification, as amended, is much like these plans, except for customers whose interLATA carrier has specified that it will also be an intraLATA carrier. The Commission will allow ALLTEL to modify its ILDP plan as requested.

In order to be even more informative, the Commission will direct ALLTEL to add the following paragraph at the end of its proposed notice:

You will still be able to make toll calls by "dialing around" using a "101XXXX" access number. A list of these "101XXXX" access numbers is available from your local ALLTEL Missouri, Inc. business office.

*See pages 176 and 245 for orders regarding Case No. TO-99-254, et al.

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IT IS THEREFORE ORDERED:

1. That the petition to modify its IntraLATA Dialing Parity plan filed by ALLTEL Missouri, Inc. on September 10, 1999, and amended on September 16, 1999, is granted.
2. That ALLTEL Missouri, Inc. shall provide notice to its customers as discussed herein.
3. That this order shall become effective on October 1, 1999.

Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Lumpe, Ch., absent
Mills, Deputy Chief Regulatory Law Judge

**In the Matter of the Petition of BPS Telephone Company for
Approval of an IntraLATA Toll Dialing Parity Plan***

Case No. TO-99-498
Decided September 21, 1999

Telecommunications §33. The Commission allowed a local exchange company to modify the notices they were ordered to provide to customers concerning intraLATA toll dialing parity.

ORDER REGARDING PETITION FOR MODIFICATION

On August 31, 1999, BPS Telephone Company (BPS) filed a petition for modification of its IntraLATA Dialing Parity (ILDLP) plan. BPS stated that it wanted to modify its ILDP plan because the plan it proposed and the Commission approved would assign customers who did not choose a primary interexchange carrier (PIC) for intraLATA toll service to their interLATA carrier, and because AT&T is the interLATA PIC for many of its customers. BPS stated that, under the plan it proposed, it is concerned that a number of customers might be defaulted to a 101XXXX dialing pattern. BPS requests that the Commission allow it to modify its plan so that customers who have not chosen a primary interexchange carrier (PIC) for intraLATA toll service by October 20, 1999, will be assigned to its long distance affiliate (FDF Communications Co. d/b/a BPS Long Distance) rather than to their interLATA carrier. BPS also requested that the Commission authorize it to send a notification letter (a copy of which it attached to its petition) explaining the modification to its customers.

*See pages 176 and 245 for orders regarding Case No. TO-99-254, et al.

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A number of secondary carriers (SCs) proposed ILDP plans that assigned customers who did not choose a PIC to a long distance affiliate of the SC, and the Commission approved these plans. (See, *e.g.*, TO-99-514, In the Matter of the Petition of Mark Twain Rural Telephone Company for Approval of an IntraLATA Dialing Parity Plan.) The Commission will allow BPS to modify its ILDP plan as requested.

However, the Commission is concerned that BPS's proposed notification letter does not stress the fact that it is a change from the earlier notice. The Commission will direct BPS to add the following paragraph in large bold type at the beginning of its proposed notice:

THIS NOTICE WILL ALERT YOU OF CHANGES THAT HAVE OCCURRED SINCE THE NOTICE YOU RECEIVED IN LATE JUNE OR EARLY JULY. Contrary to what that notice said, if you do not affirmatively choose (by contacting BPS Telephone Company or the long distance company you choose) an intraLATA toll service provider by October 20, 1999, you will be assigned to BPS Long Distance, an affiliate of BPS Telephone Company. The earlier notice stated that you would be assigned to your interLATA long distance carrier if you did not affirmatively choose an intraLATA carrier. That is no longer correct.

The Commission will also direct BPS to add the following paragraph at the end of its proposed notice:

You will still be able to make toll calls by "dialing around" using a "101XXXX" access number. A list of these "101XXXX" access numbers is available from your local BPS Telephone Company business office.

IT IS THEREFORE ORDERED:

1. That the petition to modify its IntraLATA Dialing Parity plan filed by BPS Telephone Company on August 31, 1999 is granted.
2. That BPS Telephone Company shall provide notice to its customers as discussed herein.
3. That this order shall become effective on October 1, 1999.

Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Lumpe, Ch., absent
Mills, Deputy Chief Regulatory Law Judge

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In the Matter of the Investigation into the Earnings of Lathrop Telephone Company.

Case No. TR-98-345

Decided September 23, 1999

Telecommunications §14. Where the Commission Staff filed an earnings investigation and the parties agreed to the amount of annual earnings reduction but did not agree whether any part of the reduction should be used for local rate relief, the Commission refused to allocate any of the rate reduction to local rate relief because the Company's local rates were already among the lowest in the state.

APPEARANCES

W.R. England, III, Brydon, Swearngen & England, P.C., Post Office Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for Lathrop Telephone Company.

Carol M. Keith and *Bruce H. Bates*, Assistants General Counsel, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Michael F. Dandino, Senior Public Counsel, and *Shannon Cook*, Senior Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Leo J. Bub, Senior Counsel, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64108-2684, for AT&T Communications of the Southwest, Inc.

REGULATORY LAW JUDGES: Nancy Dippell, Senior (hearing); Kevin A. Thompson, Deputy Chief (Report and Order)

REPORT AND ORDER

Procedural History

On February 13, 1998, the Staff of the Missouri Public Service Commission (Staff) and Lathrop Telephone Company (Lathrop) filed a joint motion to open docket. The motion indicated that Staff had conducted a per book review of the earnings of Lathrop. The Staff's review was based upon the twelve months ending December 31, 1996, updated for known and measurable changes occurring during 1997. The motion indicated that Staff and Lathrop had executed a Stipulation and Agreement to resolve all issues surrounding the audit performed by Staff and the results of that audit. The Stipulation and Agreement was attached to the joint motion and Staff and Lathrop requested that the Commission approve the Stipulation and Agreement.

On February 27, 1998, the Commission issued an Order Establishing Case, Giving Notice and Setting Intervention Date. That order provided that any parties wishing to intervene should file an application to do so no later than March 30, 1998. On March 30, 1998, Southwestern Bell Telephone Company (SWBT) filed an Application to Intervene and Request for Hearing. AT&T Communications of the Southwest, Inc. (AT&T), also filed an Application to Intervene on March 30, 1998. On April 10, 1998, the Commission issued an order granting the intervention applications of SWBT and AT&T.

The April 10 order also scheduled a prehearing conference for May 1, 1998, and directed the parties to file a proposed procedural schedule by May 11, 1998. After seeking three extensions, Staff filed a Motion to Establish Procedural Schedule on June 19, 1998, and the Commission issued an Order Adopting Procedural Schedule on August 4, 1998. At the request of Lathrop, an Order Granting Protective Order was issued by the Commission on August 31, 1998. Direct Testimony was filed on behalf of Staff, Lathrop, and the Office of the Public Counsel (OPC) on August 10, 1998, and rebuttal testimony was filed on behalf of Lathrop, OPC and SWBT on September 14, 1998. Surrebuttal testimony was filed on behalf of AT&T, Lathrop and OPC on October 13, 1998.

The parties filed a Hearing Memorandum on October 27, 1998. On November 9, 1998, Staff filed a motion to cancel the evidentiary hearing. The Commission denied that motion by order on November 13, 1998, and an evidentiary hearing was held on November 19, 1998. OPC, Staff and SWBT filed only initial briefs; AT&T did not file either initial or reply briefs.

During the hearing, the Commission requested two late-filed exhibits. Exhibit numbers 15 and 16 were assigned to these two exhibits. Both were filed by Staff on December 21, 1998. No party filed any objections to either of these late-filed exhibits. Also, at the close of the hearing, the parties discovered that a clause had been inadvertently left out of the Stipulation and Agreement. This clause concerned Lathrop's adoption of Staff's generic depreciation schedules for small telephone companies. Exhibit number 17 was reserved for the corrected Stipulation and Agreement, which was filed by Lathrop and Staff on December 21, 1999. No one filed any objections to the corrected Stipulation and Agreement.

Late-filed Exhibits 15, 16 and 17 are received and made a part of the record of this matter.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate

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that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

I. Uncontested Issues

The Stipulation and Agreement submitted by Staff and Lathrop contains several provisions that did not draw objection from any party.

A. Revenue Reduction

The Stipulation and Agreement provides that Lathrop's gross intrastate revenues are to be reduced by approximately \$182,711 per year. No party objected to this figure.

B. Depreciation Rates

The Stipulation and Agreement authorizes Lathrop to adopt new depreciation rates that are consistent with Staff's "generic" depreciation rates for Small Telephone Companies. No party objected to this provision.

C. Elimination of Analog Carrier Equipment

The Stipulation and Agreement provides that Lathrop will invest \$183,967 in digital carrier equipment and replace all analog carrier equipment throughout its network. Lathrop will also upgrade its existing switch to next generic level. The annual cost of these upgrades is \$36,793. No party objected to this provision of the Stipulation and Agreement.

D. Reduction of E911 Rates

The Stipulation and Agreement provides for the reduction of trunk rates for E911 service to a flat rate of \$25.00 per month, per trunk. Implementation of this rate change will result in an annual revenue reduction of \$882. No party objected to this provision of the Stipulation and Agreement.

II. Contested Issues

While the parties did not object to any of the foregoing items, there was disagreement about some other aspects of the Stipulation and Agreement. OPC objected to the clause which allocates the remainder of the rate reduction to reducing Lathrop's billing and collection charges and switched access charges. OPC contends that a portion of the reduction should be allocated to local rate relief. Thus, OPC proposes a one dollar reduction in Lathrop's residential and business monthly subscription charges. Otherwise, OPC has no objection to the reduction of billing and collection and switched access charges.

The Stipulation and Agreement also includes Lathrop's proposal to raise new revenue by increasing certain nonrecurring customer activity charges and imposing, for the first time, a per-call Directory Assistance charge. OPC objects to the amount

of the proposed increases and, at hearing, it was revealed that Lathrop and OPC have entered into a side agreement reducing the amount of these proposed increases. Lathrop proposes to allocate all of these new revenues to the reduction of its billing and collection and switched access charges. OPC again contends that some local rate relief is appropriate.

A. Proposed New Revenue

Under the Stipulation and Agreement, Lathrop proposes to raise new revenue amounting to \$7,989 by raising certain non-recurrent customer activity charges. Under the Stipulation and Agreement, Lathrop further proposes to raise additional new revenue amounting to \$10,558 by imposing a new per-call charge for Directory Assistance. Directory Assistance has heretofore been a free service to Lathrop subscribers. Lathrop proposes to allow each subscriber two free calls to Directory Assistance each billing period and to adopt language excluding persons with disabilities from the tariff of Citizens Telephone Company. Lathrop proposes to use this new revenue, as well as the bulk of the revenue reduction, to reduce its switched access charges and billing and collection charges.

OPC objects both to the magnitude of the increases proposed by Lathrop and the use that Lathrop proposes to make of the revenue. At the hearing, Lathrop and OPC revealed that they had entered into a side agreement limiting the magnitude of the proposed increased charges, as set out below. It appears that OPC has no objection to these proposed increases so long as they do not exceed the amount to which OPC has agreed:

Item:	Current Charge	Stipulation & Agreement	Lathrop & OPC
Service Order Charge	\$2.25	\$6.00	\$5.00
Central Office Connection	\$6.00	\$15.00	\$10.00
Reconnection Charge	\$6.00	\$15.00	\$10.00
Directory Assistance	-0-	\$0.45	\$0.25

B. Billing and Collection Charges

The Stipulation and Agreement allocates approximately \$19,159 of the annual revenue reduction to reducing Lathrop’s billing and collection charges.

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Rate Element	Current Rate	Proposed Rate
Recording	\$0.0483	\$0.0250
Bill Processing	\$0.0459	\$0.0300
Message Bill Service	\$0.7500	\$0.2009
Data Transmission	\$0.0084	\$0.0030
Sample Message Data	\$0.0163	\$0.0023

No party objects to the reduction of billing and collection charges. OPC objects only that some portion of the revenue reduction and new revenue should be allocated to local rate relief.

C. Reduction of switched access Charges

The Stipulation and Agreement will reduce Lathrop's switched access charges by eliminating the Carrier Common Line (CCL) intraLATA cap and intraLATA discounted CCL rates. InterLATA and intraLATA CCL rates will be brought into parity. Line Termination, End Office Switching, and Directory Surcharge Rates will be combined into a single Local Switching Rate. The switched access rates proposed under the Stipulation and Agreement are as follows:

Rate Element	Old Rate	New Rate
CCL-InterLATA Originating	\$0.04910	\$0.01003
CCL-InterLATA Terminating	\$0.08410	\$0.01003
CCL-IntraLATA Originating Full	\$0.03040	\$0.01003
CCL-IntraLATA Terminating Full	\$0.05210	\$0.01003
CCL-IntraLATA Originating Discount	\$0.00150	None
CCL-IntraLATA Terminating Discount	\$0.00260	None
Local Transport	\$0.01330	\$0.01330
Local Switching	None	\$0.01761
Directory Surcharge	\$0.000397	None
End Office Switch - LS1	\$0.0077	None
End Office Switch – LS2	\$0.01180	None
Line Termination	\$0.01490	None

No party has objected to the reduction of Lathrop's switched access rates. OPC objected only that some portion of the revenue reduction and new revenue should be allocated to local rate relief.

D. Local Rate Relief

The Stipulation and Agreement does not allocate any of the revenue reduction to the reduction of local subscriber rates. These rates, at \$7.15 monthly for residential

and \$10.15 monthly for business, are already low. Lathrop presented expert testimony, admittedly not based on a cost study, that Lathrop's local services are provided below cost. Lathrop's expert also testified that various trends in the telecommunications industry, such as universal service, are likely to result in local rate increases for Lathrop's subscribers in the future.

Staff's witness stated that Staff's policy is to not recommend local rate reductions where those rates are already below \$14 monthly. Staff stated that Lathrop's present local service rates are just, reasonable and affordable.

OPC presented expert testimony supporting local rate relief and opposing the proposed increases in customer activity charges. This testimony does not suggest that Lathrop's present local service rates are not just, reasonable and affordable, but goes only to the issue of fairness. OPC suggests that it would not be fair to allocate none of the savings realized from the annual revenue reduction to local rate relief.

The Commission finds that Lathrop's present local service charges are just, reasonable and affordable and ought not be changed.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

Lathrop Telephone Company is a local exchange telecommunications service provider as defined under Section 392.410, RSMo Supp. 1998, and, therefore, is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 392, RSMo.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

Orders of the Commission must be based upon competent and substantial evidence on the record. Section 536.140, RSMo 1994. Based upon its findings of fact, the Commission concludes that the Stipulation and Agreement submitted by Lathrop and Staff should be approved as modified by the side agreement of Lathrop and OPC, limiting the increases in customer activity charges. The parties stated at the close of the hearing that the resulting reduction in new revenue would be evenly distributed over the billing and collection charges and switched access charges.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 15, 16 and 17 are received and made a part of the record of this matter.

2. That the corrected Stipulation and Agreement filed by Lathrop Telephone Company and the Staff of the Missouri Public Service Commission on December 21, 1998, designated Exhibit 17, is hereby approved as modified by the separate agreement of Lathrop Telephone Company and the Office of the Public Counsel with respect to increases in nonrecurring customer activity charges and the imposition of a per-call charge for directory assistance services as set out below (See Attachment 1).

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Item:	New Rate
Service Order Charge	\$5.00
Central Office Connection	\$10.00
Reconnection Charge	\$10.00
Directory Assistance (per call)	\$ 0.25

3. That those motions and objections not specifically ruled on in this order are hereby denied or overruled.

4. That Lathrop Telephone Company shall file tariff sheets, with a 30-day effective date, embodying and implementing this Report and Order within 30 days of the effective date of this Report and Order.

5. That this Report and Order shall become effective on October 5, 1999.

Crumpton, Drainer, Murray and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Lumpe, Ch., absent.

EDITOR'S NOTE: The Revised Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of the Joint Application of the City of Fulton and Callaway Electric Cooperative Changing Electric Provider from Callaway Electric Cooperative to the City of Fulton and Changing Electric Provider from the City of Fulton to the Callaway Electric Cooperative.

Case No. EO-99-402

Decided September 28, 1999

Electric §4.1. Where a municipal utility and a rural electric cooperative jointly sought Commission approval to transfer 102 customers of the Co-op to the City and 78 customers of the City to the Co-op in order to reduce duplication of facilities, enhance operating efficiency, and exchange stranded facilities, the proposed change of suppliers was in the public interest and the Commission would grant approval.

ORDER GRANTING CHANGE OF ELECTRIC SUPPLIER

Procedural History:

On March 23, 1999, the City of Fulton (City) and Callaway Electric Cooperative (Co-op; jointly, the Applicants) filed their joint application for Commission authority to change electric service provider as to certain customers of each Applicant. The number of affected customers of the two suppliers is approximately 180. Some persons, previously served by the City, will become customers of the Co-op. Others, served previously by the Co-op, will become customers of the City.

On March 24, 1999, the Commission issued a notice of deficiency, noting that the joint application and its appendices lacked a certification that the same had been served upon the Public Counsel as required by Section 386.710.2, RSMo 1994. The Applicants filed their certificate of service on March 26, 1999, correcting that deficiency.

On May 20, 1999, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to investigate the circumstances set out in the joint application and to make a written report to the Commission, including a recommendation as to whether or not the joint application should be granted, on or before June 21, 1999. The Staff Memorandum was filed on June 17, 1999. In its Memorandum, Staff stated that 30 residents of Hawk Lake Subdivision had submitted a petition "expressing their objection to the proposed change of electric supplier."

On May 25, 1999, the Commission issued its Order Directing Notice, giving proper parties until June 14, 1999, to file their applications to intervene. On that day, an association of 14 persons, the Bartley Lane Intervenors, applied through counsel to intervene. These persons asserted in their application that they live on Bartley Lane in Callaway County, Missouri, outside the limits of the City of Fulton; that their electric supplier is the City; that the Applicants propose to change their supplier to the Co-op; and that they oppose the application insofar as it affects them. On June 29, 1999, the Bartley Lane Intervenors were permitted to intervene herein. The Commission at that time also set a prehearing conference and directed the parties to file a proposed procedural schedule.

On July 8, 1999, at the request of counsel for the Bartley Lane Intervenors, the Commission rescheduled the prehearing conference and the submission of a proposed procedural schedule. On July 22, 1999, the Commission by order set a local public hearing to be held in Fulton, Missouri, on the evening of September 7, 1999, in order to facilitate the receipt of public comment regarding the proposed change of electric suppliers. On July 28, 1999, the prehearing conference was held. The parties submitted their proposed procedural schedule that day and the Commission adopted it by order issued on July 29, 1999. The parties filed a list of controverted issues on August 13, 1999, and the Applicants filed their Direct Testimony on August 27, 1999.

The local public hearing was held on the premises of William Woods University in Fulton, Missouri, on September 7, 1999. One person, a resident of the Hawk Lake

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Subdivision, offered testimony against the proposed change of suppliers. Two members of the Bartley Lane Intervenors appeared and stated that they were withdrawing their opposition to the proposed change of suppliers. On September 15, 1999, the Bartley Lane Intervenors filed their Motion to Withdraw. On the same day, Staff filed its Motion to Stay the Procedural Schedule, which the Commission granted by Order issued on September 16, 1999.

Discussion:

With respect to customers of rural electric cooperatives, section 394.315.2, RSMo 1994, authorizes the Commission upon application of any affected party to order “a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential.” Likewise, section 386.800.8, RSMo 1994, vests the Commission with “all necessary jurisdiction over municipally owned electric utilities and rural electric cooperatives” where a municipal utility is providing electric service outside of the municipality’s corporate boundaries.

In their joint application, the Applicants request authority to transfer 102 customers of the Co-op to the City and 78 customers of the City to the Co-op. The reason for the proposed change is to reduce duplication of facilities and to permit the Applicants to operate more efficiently. Both the City and the Co-op presently seek to exchange the “stranded” facilities historically used to serve customers now located within the exclusive service territory of the other. The Applicants have both consented to the change and aver that it is not proposed because of any rate differential.

In its Memorandum filed on June 17, 1999, the Staff recommended that the Commission grant the joint application. Staff states that the facilities in question are isolated from other facilities of the City and Co-op and are located in territory where the City, or Co-op, is not authorized to add new customers. Thus, as population growth occurs, each utility must needlessly duplicate the other’s stranded facilities because of the inability to add new customers.

Staff states that the proposed transfer will permit each utility to consolidate its customers geographically and reduce further duplication of services. Staff states that, while the rate structures of the two utilities are different, annual charges to customers are very similar. Some of the consumers affected by the proposal will experience a reduction in rates, while other will experience an increase in rates.

At the local public hearing, one customer of the Co-op spoke against her proposed transfer to the City. However, she admitted that she had no experience with the City as an electric provider. Her experience involved other City services.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since the only request for a hearing made in this case has been withdrawn, the Commission may grant the relief requested based on the verified application.

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The Commission has considered the joint application, Staff's Memorandum, and the comments made at the local public hearing. The Commission finds that the proposed change of suppliers is in the public interest for a reason other than a rate differential. Therefore, the joint application shall be granted.

IT IS THEREFORE ORDERED:

1. That the change of electric service suppliers proposed in the joint application filed on March 22, 1999, by the City of Fulton and Callaway Electric Cooperative is approved.
2. That this order shall become effective on October 8, 1999.
3. That this case may be closed on October 12, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

**In the Matter of the Laclede Gas Company's Tariff Sheets to
Extend and Revise the Company's Gas Supply Incentive Plan.***

Case No. GT-99-303
Decided September 28, 1999

Gas § 17.2. The Commission found that Laclede Gas Company's request for clarification of the Commission's Report and Order, issued September 9, 1999, was reasonable. The Commission clarified that it approved the company's proposal to add a firm Fixed Price Component to the Gas Supply Incentive Plan (GSIP II). However the Commission declined to extend the GSIP II beyond the one-year term granted in the Report and Order, thus denying the Company's request for reconsideration regarding the term of the GSIP II.

**ORDER REGARDING REQUEST FOR CLARIFICATION
AND/OR RECONSIDERATION**

On September 9, 1999, the Commission issued a Report and Order approving a modified version of Laclede Gas Company's (Laclede) Gas Supply Incentive Plan (GSIP II). On September 14, Laclede filed tariff sheets in order to comply with the Report and Order. The proposed tariff sheets bore an effective date of October 1, 1999. The Staff of the Commission (Staff) filed a memorandum on September 20, which indicated that the Report and Order does not clearly state whether the Fixed Price Component should be included in the GSIP II, and therefore, Laclede's tariff filing did not include a firm Fixed Price Component. Staff stated that the tariff filing is in compliance with the Report and Order and that there is good cause for approval of

*See page 322 for another order in this case. The Commission, in an order issued on November 2, 1999, denied a request for clarification. In an order issued on November 4, 1999, the Commission denied an application for rehearing in this case.

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the tariff sheets on less than thirty (30) days notice. On September 23, the Commission issued an order approving Laclede's tariff filing.

On September 17, 1999, Laclede filed a Request for Clarification and/or Reconsideration. Laclede states that there are two aspects of the Report and Order which Laclede believes require clarification or reconsideration. The first aspect involves Laclede's proposal to incorporate a Fixed Price Component into its gas procurement incentive. Laclede alleges that it is unclear from the Report and Order whether the Commission approved Laclede's firm Fixed Price Component proposal or a modified version of it. Laclede requests that the Commission clarify its Report and Order in this respect so that it will be able to file compliant tariff sheets.

Laclede's second concern is the Commission's decision to limit the term of the program to one year. Laclede acknowledges the validity of the Commission's reasoning regarding the possibility of energy deregulation legislation during the upcoming legislative session. However, Laclede also notes that the parties and the Commission have devoted substantial resources to preparing, litigating and deciding this case. Laclede believes that no purpose would be served by requiring the Commission and the parties to devote their limited resources to reexamining the issues in this case in one year. Laclede suggests that the appropriate solution is to adopt a tariff provision that explicitly permits the GSIP to be suspended if legislation significantly affecting the program becomes effective. The tariff provision could further provide for the establishment of a subsequent proceeding for the purpose of determining whether the GSIP should be permanently canceled, or continued in some modified form to account for the effect of the legislation. Laclede contends that in the absence of such legislation, the program should be permitted to continue to operate beyond one year, without the necessity of conducting another proceeding.

Staff filed a response to Laclede's request for clarification and/or reconsideration on September 22. Staff indicates that it does not believe that the Commission needs to reconsider the term of the program specified in its September 9, Report and Order. Staff argues that in addition to the possible legislative change cited by the Commission, the GSIP II makes significant modifications to the prior program, and introduces a new element, the mix of pipeline services. Staff states that the natural gas industry is facing significant change in the next year or so by virtue of substantial new supplies of natural gas becoming available in the Chicago area hub, and Laclede faces renegotiation of a substantial portion of its natural gas transportation portfolio. Staff contends that these factors mitigate in favor of a limited extension of the GSIP II. Staff argues that although consideration of these issues in a contested case setting does require substantial resources from all parties involved, the Commission should bear in mind that the GSIP II involves millions of dollars for both ratepayers and Laclede. The GSIP II merits close examination, particularly in a changing environment.

The Office of the Public Counsel filed an Application for Rehearing on September 20, and on September 21, Missouri Gas Energy (MGE) filed a Motion for Clarification. These two requests will be addressed in separate orders.

The Commission has reviewed Laclede's request for clarification and/or reconsideration and the various other pleadings, and has determined that the request for clarification regarding the Fixed Price Component is reasonable. The Commission intended the Report and Order to approve Laclede's proposal to add a firm Fixed Price Component as previously discussed. Under this provision, to the extent that Laclede enters into firm fixed price contracts with a price equivalent to or lower than both a) the historical five-year average of gas prices for the applicable winter or summer period; and b) the current market price prevailing during the month or months for which the gas was purchased, the company will share in the savings. Laclede's share of these savings will be based on a sliding scale that begins at 10 percent and increases to 50 percent for savings in excess of \$.40 per MMBtu. Gas volumes covered by the firm fixed price contracts will be excluded from the Gas Procurement Component of the GSIP II. The Commission hereby clarifies that this proposal is approved. Laclede is authorized to file tariff sheets, consistent with this order, implementing this firm Fixed Price Component of the Gas Procurement Component of the GSIP II.

The Commission also concludes that the one-year term provided for in the Report and Order is reasonable and in the public interest, and therefore the Commission will not extend the term as suggested by Laclede. However, the Commission notes that this does not preclude Laclede from asking for a future extension of the GSIP II. Laclede's request for reconsideration regarding the term of the GSIP II is denied.

IT IS THEREFORE ORDERED:

1. That the request of Laclede Gas Company for clarification and/or reconsideration is granted in part and denied in part. The Commission will clarify the portion of the September 9, 1999, Report and Order regarding the firm Fixed Price Component of the Gas Procurement Component. At this time, however, the Commission will not extend the term of the modified Gas Supply Incentive Plan beyond the one-year term approved in the Report and Order.

2. That the Laclede Gas Company is directed to expeditiously file tariff sheets, consistent with this order, implementing a firm Fixed Price Component to the Gas Procurement Component.

3. That this order shall become effective on September 28, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.
Ruth, Regulatory Law Judge

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In the Matter of the Implementation of Number Conservation Methods in the St. Louis, Missouri Area

Case No. TO-99-14

Decided September 30, 1999

Telecommunications §§1, 8. The Public Service Commission followed the guidance of the Federal Communications Commission when the FCC declared that the state commissions were already delegated the authority to deal with consolidating rate centers or areas, even for the purpose of number conservation efforts, as part of the rate setting authority. See, In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 and the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224. (Released September 28, 1998). The Commission approved Rate Center Consolidation Report option 1 as reasonable and directed Southwestern Bell Telephone Company to implement Rate Center Consolidation Report option 1 no later than December 31, 1999.

Telecommunications §§1, 8. The Commission directed Staff of the Commission to seek additional authority from the FCC to implement telephone number conservation methods, including but not limited to one thousand block number pooling and sequential number assignments.

REPORT AND ORDER

I. Procedural History

The Commission established this case in its Report and Order issued on July 22, 1998 in Case No. TO-98-212. Case No. TO-98-212 involved the issue of exhaustion of the central office codes (NXX or CO code) in the 314 numbering plan area (NPA). The Commission ordered the parties to meet and develop means of implementing area code number conservation in three areas: sequential numbering assignment, rate center consolidation, and number pooling. The Commission directed the parties to file a report on sequential number assignment, rate center consolidation, and number pooling on October 22 and December 22, 1998 and February 22, 1999 respectively. The Commission directed the parties to file a proposed procedural schedule no later than September 22, 1998 and directed any entity wishing to intervene to file its application no later than August 24, 1998.

In its July 22, 1998 order, the Commission made all parties to Case No. TO-98-212 parties in this case for all purposes. In addition to the Staff of the Public Service Commission (Staff) and the Office of the Public Counsel (Public Counsel), the parties in Case No. TO-98-212 included:

Ameritech Mobile Communications, Inc. (AMCI);
AT&T Communications of the Southwest, Inc. (AT&T);
GTE Midwest Incorporated (GTE)
MCITelecommunications Corporation (MCI)
Midwest Independent Coin Payphone Association (MICPA)

The Mid-Missouri Group of Telephone Companies

(Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company) (**Mid-Missouri Group**)

Orchard Farm Telephone Company (Orchard Farm)

Southwestern Bell Mobile Systems, Inc. (SWB Mobile)

Southwestern Bell Telephone Company (SWBT)

TCG St. Louis (TCG)

**United Telephone Company of Missouri d/b/a Sprint
(Sprint-United)**

On October 16, 1998, the Commission granted intervention to Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West, Inc., Brooks Fiber Communications of Missouri, Inc., Citizens Telephone Company, Grand River Mutual Telephone Company, Lathrop Telephone Company, and Oregon Farmers Mutual Telephone Company. The Commission also established a procedural schedule and a protective order in its October 16 order.

Staff filed a motion with the Commission on December 28, 1998, requesting that the Commission cancel the established procedural schedule except for the hearing date to allow the Commission to examine the parties regarding these reports. Staff indicated in its motion that the parties were in agreement on all issues and had not identified any contested issues in the reports. Therefore, an adversarial hearing was not necessary. The Commission did not receive any objections to Staff's request. On January 26, 1999, the Commission granted the late-filed application of Mark Twain Rural Telephone Company for intervention and amended the procedural schedule by canceling all procedural schedule dates except the date for filing of the hearing memorandum and the date set for evidentiary hearing as requested by Staff. The Commission ordered the parties to file the Hearing Memorandum by April 19, 1999, and the hearing was scheduled on May 3, 1999 through May 7, 1999¹.

On April 19, 1999, the hearing memorandum was filed with the Commission. The parties requested that the witnesses be sworn in and appear as a panel because there were no contested issues and because of the technical nature of the material at issue. The evidentiary hearing was held and completed on May 3, 1999. Various procedural motions were ruled upon at hearing. The witnesses were sworn and examined in panel fashion as requested by the parties. The witnesses who were sworn and testified were:

¹ The Commission later amended the scheduled dates for hearing for May 3 through May 6, 1999 because May 7, 1999 was an official state holiday, Harry S Truman's Birthday.

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- 1. Dan Paul of Ameritech Mobile Communications, Inc.**
- 2. John Rollins of GTE Midwest Incorporated**
- 3. Suzanne Brooks of MCI Telecommunications Corporation
and Brooks Fiber Communications of Missouri, Inc.**
- 4. Barbara A. Meisenheimer of the Office of the Public Counsel**
- 5. Bill Adair of Southwestern Bell Telephone Company**
- 6. Craig Unruh of Southwestern Bell Telephone Company**
- 7. Hoke Knox of Sprint**
- 8. Don Edwards of Sprint**
- 9. Anthony Clark of the Staff of the Missouri Public Service Commission.**

On September 27, 1999, Public Counsel filed a request that the Commission petition the FCC for authority to implement number conservation methods.

II. Exhibits

Staff filed the Sequential Numbering Assignment Report with the Commission on October 22, 1998 on behalf of the parties. This report was marked as Exhibit No. 1 for identification purposes at hearing and will be admitted into evidence.

Staff filed the Rate Center Consolidation Report on December 22, 1998 on behalf of the parties in compliance with the Commission's July 22 order. This report was marked as Exhibit No. 2 for identification purposes at the hearing and will be admitted into evidence. GTE filed its highly confidential portion of the Rate Center Consolidation Report on December 21. GTE's HC report shall be marked as Exhibit No. 2A-HC for identification. SWBT filed its highly confidential supplement to the Rate Center Consolidation Report on December 22, 1998. SWBT's HC report has been marked as Exhibit No. 2B-HC for identification. Exhibit Nos. 2A-HC and 2B-HC will be admitted into evidence.

On February 22, 1999, a Report on Number Pooling was filed with the Commission by Staff on behalf of the parties in compliance with the Commission's July 22 order. The number pooling report was marked as Exhibit No. 3 for identification at the hearing. Exhibit No. 3 will be admitted into evidence.

III. Official Notice Taken of States' Actions Filed before the Federal Communications Commission (FCC)

Federal statutes gave the Federal Communications Commission (FCC) authority to regulate telecommunications and to implement the Telecommunications Act of 1996. The FCC delegated authority to the state commissions to implement area code relief².

² Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order).

On September 28, 1998, the FCC released a Memorandum Opinion and Order and Order on Reconsideration in the FCC case *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 and the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224. (Pennsylvania Order (Released September 28, 1998)). In this decision, the FCC declared that Pennsylvania Public Utility Commission had exceeded the scope of the authority the FCC had delegated to the state commissions. In its Pennsylvania Order released September 28, 1999, the FCC delegated additional authority to state commissions to order NXX code rationing, under certain conditions, so that state commissions would have more flexibility to assure that area codes will last until full implementation of relief. The FCC also directed the Chief of the Common Carrier Bureau to determine whether state commissions should be delegated additional authority to implement innovative or experimental area code number conservation efforts.

Some states have already received FCC orders granting additional authority for area code number conservation measures. On September 15, 1999, the FCC granted additional delegated authority to the states of Massachusetts, New York, California, and Florida by FCC Order Nos. FCC 99-246, FCC 99-247, FCC 99-248, and FCC 99-249 respectively³. Additional authority for number conservation measures granted by the FCC included 1,000 block pooling trials, establishing usage thresholds, reclamation of unused and reserved NXX codes, requiring sequential number assignment, setting numbering allocations standards, hearing and addressing claims of carriers seeking numbering resources outside of the rationing process, maintaining rationing procedures for six months following area code relief, and auditing carriers' use of numbering resources.

The FCC also stated that there was no need for the FCC to take any action regarding "consolidating rate centers/areas" or "authorizing carriers to use inconsistent rate centers and extended local calling areas" because those issues are

³ *In the Matter of* Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, CC Docket No. 96-98, NSD File No. L-97-19, FCC 99-246 (September 15, 1999); *In the Matter of* California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, CC Docket No. 96-98, NSD File No. L-98-136, FCC 99-248 (September 15, 1999); *In the Matter of* Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-33, FCC 99-249 (September 15, 1999); *In the Matter of* the State of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-21, FCC 99-247 (September 15, 1999). already within the authority of the state commissions⁴. Other states have also filed

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petitions requesting additional delegated authority but those petitions have not been resolved before the FCC. Those states with pending requests include New Hampshire, Wisconsin, Connecticut, Maine, and Texas⁵.

The Commission shall take official notice of the petitions filed by those states referenced above with the FCC and the FCC orders issued September 15, 1999, for the purposes of this Report and Order.

IV. Sequential Numbering Assignment and Number Pooling

In the Sequential Number Assignment Report filed by the parties, the parties noted that the issues of sequential number assignment and number pooling have been determined by the FCC to be under its exclusive jurisdiction and that states issuing orders in the areas involving number conservation would be acting outside the scope of their authority. Pennsylvania Order (Released September 28, 1998).

In the Sequential Number Assignment Report, the parties stated industry members have already voluntarily begun to assign telephone numbers sequentially in an effort to prepare for the implementation of number conservation measures in the near future. The reporting parties stated that they intend to be consistent with the current applicable directions and definitions contained in the Industry Numbering Committee (INC) Guidelines⁶. Further, the parties stated in their sequential number assignment report that the primary benefit of sequential assignment rules would appear to be keeping the maximum possible number of 1,000 blocks uncontaminated for use in 1,000-block number pooling.

⁴In the Matter of Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, CC Docket No. 96-98, NSD File No. L-97-19, FCC 99-246 (September 15, 1999); In the Matter of Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-33, FCC 99-249 (September 15, 1999).

⁵ In the Matter of the New Hampshire Public Utility Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code, CC Docket No. 96-98, NSD File No. L-97-42; In the Matter of the Public Service Commission of Wisconsin's Petition Requesting Authority to Implement Various Number Conservation Measures; In the Matter of the Connecticut Department of Public Utility Control's Petition Requesting Additional Authority to Implement Area Code Conservation Measures, NSD File No. L-99-62; In the Matter of Maine Public Utility Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket 96-98, NSD File No. L-99-27; In the Matter of the Petition of the Public Utility Commission of Texas for Deregulation of Additional Authority to Implement Number Conservation Measures, NSD File No. L-99-55, CC Docket No. 96-98.

⁶ "1,000 Block (NXX-X) Assignment Guidelines," Industry Numbering Committee, Draft 11, September 8, 1998, Section 2.7c.

The 1,000-block number pooling report identifies 1,000-block number pooling as the allocation to service providers of telephone numbers in blocks of 1,000 from a common pool by a neutral administrator. Currently, the neutral administrator assigns telephone numbers to service providers in blocks of 10,000. Individual telephone number pooling is the allocation to service providers of individual telephone numbers from a common pool by a neutral administrator. The parties indicted in their report on number pooling that efforts continue at the national level to develop 1,000-block number pooling. The parties also included a copy of a portion of the Number Resource Optimization Working Group's Modified Report to the North American Numbering Council (NANC) on Number Optimization Methods dated October 20, 1998. In addition, the report on number pooling included a copy of the Industry Numbering Committee 1,000-block (NXX-X) Pooling Administration Guidelines dated January 27, 1999. The parties state that implementation of number pooling can only be accomplished after the issuance of a FCC order.

V. Rate Center Consolidation

In their report on rate center consolidation, the parties analyzed and described various options that the parties have considered in their discussions and technical conferences. The parties also stated that they had determined, after analysis of the rate center consolidation issues, that while rate center consolidation does offer some long-term number conservation, it does not significantly delay the next NPA exhaust without severe customer impacts. After review of the options, the parties recommended that the Commission order SWBT to implement Rate Center Consolidation Report Option No. 1 (RCCR Option No. 1). The parties stated that RCCR Option No. 1 would reduce the number of rate centers within the new 314 NPA from 14 to 7 and would provide longer term NXX code conservation with minimal customer impact within 90 days of a Commission order. The parties' reported further that SWBT revenue impacts can be largely avoided by careful location of the new toll rating point. Depending on an individual customer's toll calling pattern, the report stated that individual customers may experience higher or lower toll bills. The Rate Center Consolidation Report discusses the other options and the reasons why those options are considered inferior and are not recommended.

VI. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making a decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

A. Rate Center Consolidation

Implementation of RCCR Option No. 1 will likely result in some level of area code number conservation. In the Rate Center Consolidation Report filed by the parties

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and in the testimony provided in the hearing held on May 3, 1999, the parties agreed that RCCR Option No. 1 is the most reasonable option available for rate center consolidation in that it will have the least amount of impact on consumers and can be implemented quickly to begin number conservation efforts. The Commission, therefore, finds that RCCR Option No. 1 is reasonable and SWBT will be directed to implement RCCR Option No. 1 in the St. Louis area.

B. Sequential Numbering Assignment and Number Pooling

The Commission finds that it is necessary to seek additional delegated authority from the FCC in order for the Missouri Public Service Commission to pursue area code number conservation methods such as sequential numbering assignment and number pooling. The Commission will direct the Commission Staff, with the assistance of the General Counsel's Office, to file a request with the FCC seeking additional delegated authority to implement all available number conservation measures in the state of Missouri including but not limited to those number conservation methods for which the FCC has granted additional delegated authority to other states. Staff shall also continue to consult with industry participants regarding exhaustion of area code numbers in the state of Missouri, currently using the 314, 636, 816, 660, 573 and 417 area codes.

VII. Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over the subject matter of this case pursuant to Section 386.250 and Section 392.520, RSMo 1994. The statutes provide the Commission with general regulatory authority over the operations of the telecommunications companies within its jurisdiction, including conditions and methods of providing service. The selection of a method for addressing NPA exhaustion and the changing of customer dialing patterns is within this broad statutory authority. The Missouri Public Service Commission already has issued decisions regarding the establishment and modification of rate centers and extended local calling areas under its broad authority referenced above.

The FCC has recognized that state commissions have a significant role in choosing area code relief mechanisms and deciding details of the implementation of those area code relief methods. Pennsylvania Order Released September 28, 1998. The FCC has not delegated to state commissions the authority to administer or allocate NXX codes. *Id.* In the Pennsylvania Order Released September 28, 1998, the FCC reconsidered the delegated authority granted to state commissions to implement area code relief. The FCC granted additional authority to state commission to order NXX code rationing, under certain conditions, giving the state commissions more flexibility in implementation of relief. In addition, the FCC ordered further consideration of additional delegation of authority to the states to implement number conservation methods.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company shall implement Rate Center Consolidation Option No. 1 no later than December 31, 1999. Southwestern Bell Telephone Company shall submit a report to the Commission by October 30, 1999, setting forth the proposal with time line information indicating when the Commission should expect completion of the implementation of the Rate Center Consolidation Report Option No. 1 as set forth in the Rate Center Consolidation Report filed with the Commission on December 22, 1998.

2. That the Staff of the Public Service Commission shall file a request with the Federal Communication Commission seeking additional delegated authority on an expedited basis to implement all available number conservation measures in the state of Missouri including but not limited to those number conservation methods for which the FCC has granted additional delegated authority to other states.

3. That this order shall become effective on October 12, 1999.

4. That this case may be closed after October 13, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Register, Regulatory Law Judge

**In the Matter of the Application of Alma Long Distance, L.L.C. for
a Certificate of Service Authority to Provide IntraLATA and
InterLATA Interexchange and Basic Interexchange Telecom-
munications Services.***

*Case No. TA-2000-240
Decided October 5, 1999*

Telecommunications §3.2, Certificates §46.2. The Commission granted an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.

**ORDER APPROVING TEMPORARY INTEREXCHANGE CERTIFICATE OF
SERVICE AUTHORITY AND ORDER APPROVING TARIFF**

Alma Long Distance L.L.C (ALD) applied to the Public Service Commission on September 17, 1999, for a certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services in Missouri under '392.440, RSMo 1994¹. ALD filed a revised Application on September 27. ALD is a Limited Liability Company authorized to do business in Missouri, with its principal office located at P.O. Box 206, South County Road, Alma, Missouri 64001.

ALD asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. ALD also requested expedited treatment of its application so that its application could be approved on or before October 5. The Commission issued a Notice of Applications and Opportunity to Intervene on September 28, directing parties wishing to intervene to file their requests by October 8.

On September 29, the Commission issued an order directing its Staff to file a recommendation regarding ALD's Application no later than October 4. On October 4, Staff filed a Memorandum recommending that the Commission grant a temporary certificate to ALD to provide interexchange telecommunications services. Staff indicated that it is essential that ALD be granted its certificate on or before October 5, so that it can begin providing interexchange service no later than October 21. This expedited treatment is necessary because (1) AT&T has not yet decided to provide 1+ intraLATA service, (2) the need to make modifications to the IntraLATA Toll Dialing Parity Implementation Plans of Alma Telephone

*See page 383 for another order in this case.

¹All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

Company by October 20, and (3) the need to give customers timely notification.

Because the time established for intervention, October 8, has not yet passed, Staff recommends that the Commission grant ALD a temporary certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services. Staff recommends that this temporary certificate remain in effect for a period that shall terminate on the earlier of the effective date of the Commission's final order ruling on the application for certificate of service authority or one year. If no parties intervene, Staff recommends that the Commission cancel the temporary certificate of service authority and issue a certificate of service authority.

ALD filed a proposed tariff in conjunction with its application and filed substitute sheets on September 29. The tariff's effective date is October 21. ALD's tariff describes the rates, rules, and regulations it intends to use, identifies ALD as a competitive company, and lists the waivers requested. Staff recommended that the Commission approve the proposed tariff as amended to become effective on October 21.

The Commission will approve a temporary certificate of service authority so that the customers of Alma Telephone Company who have not selected a primary intraLATA toll carrier will not be without 1+ intraLATA toll service. The Commission is authorized to take this action by Section 392.410.6, RSMo Supp. 1998. The Commission will consider the issuance of a permanent certificate of service authority after other interested parties have had an opportunity to intervene.

The Commission finds that the services Applicant proposes to offer are competitive and Applicant should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that ALD's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange carriers. The Commission finds that the proposed tariff filed on September 20 shall be approved as amended to become effective on October 5.

IT IS THEREFORE ORDERED:

1. That Alma Long Distance L.L.C is granted a temporary certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That the temporary certificate of service authority granted to Alma Long Distance, L.L.C. shall be effective for a period of one year unless sooner canceled by order of the Commission.

3. That Alma Long Distance L.L.C is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

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392.240(1)	- ratemaking
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290	- issuance of securities
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.340	- reorganization(s)
392.330, RSMo Supp. 1998	- issuance of securities, debts and notes

Commission Rules

4CSR 240-10.020	- depreciation fund income
4CSR 240-30.010(2)(C)	- rate schedules
4CSR 240-30.040	- Uniform System of Accounts
4CSR 240-32.030(1)(B)	- exchange boundary maps
4CSR 240-32.030(1)(C)	- record keeping
4CSR 240-32.030(2)	- in-state record keeping
4CSR 240-32.050(3)	- local office record keeping
4CSR 240-32.050(4)	- telephone directories
4CSR 240-32.050(5)	- call intercept
4CSR 240-32.050(6)	- telephone number changes
4CSR 240-32.070(4)	- public coin telephone
4CSR 240-33.030	- minimum charges rule
4CSR 240-33.040(5)	- financing fees

4. That the tariff filed by Alma Long Distance L.L.C on September 20, 1999, and assigned tariff number 200000260 is approved as amended to become effective on October 5, 1999. The tariff approved is:

Alma Long Distance. L.L.C.

P.S.C. Mo. No. 1

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5. That this order shall become effective on October 5, 1999.

Morris L. Woodruff, Regulatory Law Judge by delegation of Authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

In the Matter of the Application of Northeast Missouri Long Distance, L.L.C. for a Certificate of Service Authority to Provide IntraLATA and InterLATA Interexchange and Basic Interexchange Telecommunications Services.*

Case No. TA-2000-242
Decided October 5, 1999

Telecommunications §3.2, Certificates §46.2. The Commission granted an affiliate of an incumbent local exchange company a temporary certificate of service authority to provide intrastate, interexchange telecommunications services to permit the company to promptly implement modifications to its IntraLATA Toll Dialing Parity Implementation Plan so that its customers who had not selected a primary intraLATA toll carrier would not be without intraLATA toll service.

**ORDER APPROVING TEMPORARY INTEREXCHANGE CERTIFICATE OF
SERVICE AUTHORITY AND ORDER APPROVING TARIFF**

Northeast Missouri Long Distance L.L.C (NELD) applied to the Public Service Commission on September 20, 1999, for a certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services in Missouri under §392.440, RSMo 1994¹. NELD filed a revised Application on September 27. NELD is a Limited Liability Company authorized to do business in Missouri, with its principal office located at 718 S. West Street, P.O. Box 98, Green City, Missouri 63545. NELD is an affiliate of Northeast Missouri Rural Telephone Company.

NELD asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. NELD also requested expedited treatment of its application so that its application could be approved on or before October 5. The Commission issued a Notice of Applications and Opportunity to Intervene on September 28, directing parties wishing to intervene to file their requests by October 8.

On September 29, the Commission issued an order directing its Staff to file a recommendation regarding NELD's Application no later than October 4. On October 4, Staff filed a Memorandum recommending that the Commission grant a temporary certificate to NELD to provide interexchange telecommunications services. Staff indicated that it is essential that NELD be granted its certificate on or before October 5, so that it can begin providing interexchange service no later

*See page 385 for another order in this case.

¹All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

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than October 21. This expedited treatment is necessary because (1) AT&T has not yet decided to provide 1+ intraLATA service, (2) the need to make modifications to the IntraLATA Toll Dialing Parity Implementation Plans of Northeast Missouri Rural Telephone Company, and its affiliate Modern Telecommunications Company by October 20, and (3) the need to give customers timely notification. Because the time established for intervention, October 8, has not yet passed, Staff recommends that the Commission grant NELD a temporary certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services. Staff recommends that this temporary certificate remain in effect for a period that shall terminate on the earlier of the effective date of the Commission's final order ruling on the application for certificate of service authority or September 20, 2000. If no parties intervene, Staff recommends that the Commission cancel the temporary certificate of service authority and issue a certificate of service authority.

NELD filed a proposed tariff in conjunction with its application and filed substitute sheets on September 27 and 30. The tariff's effective date is October 21. NELD's tariff describes the rates, rules, and regulations it intends to use, identifies NELD as a competitive company, and lists the waivers requested. NELD intends to provide interexchange telecommunications services including 1+, 800/888/877, Directory Assistance, Operator, Private Line and Travel Card services. Staff recommended that the Commission approve the proposed tariff as amended to become effective on October 21.

The Commission will approve a temporary certificate of service authority so that the customers of Northeast Missouri Rural Telephone Company, and its affiliate Modern Telecommunications Company who have not selected a primary intraLATA toll carrier will not be without 1+ intraLATA toll service. The Commission is authorized to take this action by Section 392.410.6, RSMo Supp. 1998. The Commission will consider the issuance of a permanent certificate of service authority after other interested parties have had an opportunity to intervene.

The Commission finds that the services Applicant proposes to offer are competitive and Applicant should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that NELD's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange carriers. The Commission finds that the proposed tariff filed on September 20 shall be approved as amended to become effective on October 21.

IT IS THEREFORE ORDERED:

1. That Northeast Missouri Long Distance L.L.C is granted a temporary certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That the temporary certificate of service authority granted to Northeast Long Distance L.L.C. shall be effective for a period of one year unless sooner canceled by order of the Commission.

3. That Northeast Missouri Long Distance L.L.C is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.240(1)	-ratemaking
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290	- issuance of securities
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.340	-reorganization(s)
392.330, RSMo Supp. 1998	- issuance of securities, debts and notes

Commission Rules

4CSR 240-10.020	- depreciation fund income
4CSR 240-30.010(2)(C)	- rate schedules
4CSR 240-30.040	- Uniform System of Accounts
4CSR 240-32.030(1)(B)	- exchange boundary maps
4CSR 240-32.030(1)(C)	- record keeping
4CSR 240-32.030(2)	- in-state record keeping
4CSR 240-32.050(3)	- local office record keeping
4CSR 240-32.050(4)	- telephone directories
4CSR 240-32.050(5)	- call intercept
4CSR 240-32.050(6)	- telephone number changes
4CSR 240-32.070(4)	- public coin telephone
4CSR 240-33.030	- minimum charges rule
4CSR 240-33.040(5)	- financing fees

3. That the tariff filed by Northeast Missouri Long Distance L.L.C on September 20, 1999, and assigned tariff number 200000262 is approved as amended to become effective on October 21, 1999. The tariff approved is:

Northeast Missouri Long Distance. L.L.C.

P.S.C. Mo. No. 1

Original Sheets 1-42

4. That this order shall become effective on October 5, 1999.

Morris L. Woodruff, Regulatory Law Judge by delegation of Authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

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In the Matter of the Application of Gary L. Smith d/b/a Incline Water & Sewer Company to Sell and Transfer its Franchise Works or System to Warren County Water and Sewer Company, a Missouri Corporation, and to Expand its Operating Area, and for Such Other Related Matters.

Case No. WA-96-449
Decided October 5, 1999

Water §2. A water company was granted a certificate of convenience and necessity for an area on the condition that it build a water tower to serve that area within a certain time. When the water company failed to build the tower within the time allowed, its certificate for the area was canceled.

ORDER CANCELING CERTIFICATE AND CLOSING CASE

On June 21, 1996, Gary L. Smith d/b/a Incline Village Water and Sewer (Incline) and Warren County Water and Sewer (WCWS) filed a joint application in which, *inter alia*, WCWS sought a certificate of public convenience and necessity to provide service in unincorporated areas of Warren, Lincoln, and St. Charles Counties (Extended Area).

On January 7, 1998, the parties filed a unanimous stipulation and agreement that resolved all the issues. The stipulation provided that Incline should be conditionally granted a certificate to provide water service in the Extended Area. The Commission found that granting a certificate to provide water service in the Extended Area was necessary and convenient, and further found that the conditions were reasonable. The stipulation provided that the certificate granted to Incline to serve the Extended Area would be conditioned upon Incline or WCWS constructing a water storage tower in accord with a specified construction schedule. Since the ability to serve the Extended Area properly is partially dependent on the storage and pressure the tower will provide, the authority to serve the Extended Area was made contingent on the completion of the tower. The Commission ordered:

That the authority to serve the expanded territory sought herein is conditionally granted to Gary L. Smith d/b/a Incline Village Water and Sewer and shall not be exercised until such time as the water tower is constructed and operational in accord with the construction schedule set forth in Attachment A, and this authority shall be canceled if each of the conditions set forth in paragraph 32 of Attachment A are not satisfied.

On September 7, 1999, in response to a Commission order, the Staff of the Commission filed a verified status report. In its report, Staff stated that WCWS has not yet begun construction of the tank and has not met the conditions to which it

agreed in the Stipulation and Agreement. Staff states that WCWS has, by its failure to meet these conditions, forfeited the certificate for the Extended Area. In Staff's opinion, this case is not yet in a condition to be closed because the need for the storage tank has not gone away.

WCWS did not respond to the Staff report.

The Commission finds, based on the Staff's verified report, that WCWS has not met the conditions to which it agreed, and that its certificate to serve the Extended Area is canceled. WCWS may, of course, file a new case seeking a certificate of convenience and necessity for this area if and when it decides to serve it. Since any new application will bear a new case number, this case may be closed.

IT IS THEREFORE ORDERED:

1. That the certificate of convenience and necessity conditionally granted to Gary L. Smith d/b/a Incline Village Water and Sewer or Warren County Water and Sewer on June 18, 1998 is canceled.
2. That this order shall become effective on October 15, 1999.
3. That this case may be closed on October 18, 1999.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crompton, C., absent
Mills, Deputy Chief Regulatory Law Judge

**In the Matter of Missouri Gas Energy's Tariff Sheets Designed to
Renew for an Additional Year the Price Stabilization Fund and
Capacity Release Incentive Mechanism.**

Case No. GO-2000-231
Decided October 14, 1999

Electric §20. Where Company sought to renew for an additional year the price stabilization fund and capacity release incentive mechanism, no party objected and the record showed that renewal would protect consumers from possible price increases during the winter heating season, renewal was in the public interest and would be granted by the Commission.

ORDER APPROVING TARIFF

On September 14, 1999, Missouri Gas Energy, a division of Southern Union Company (MGE), filed its application to renew for an additional year the price stabilization fund and capacity release incentive mechanism. Together with its application, MGE filed tariff sheets with an effective date of October 15, 1999, which are assigned Tariff File Number 200000232. Also accompanying MGE's application

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was its Motion for a Protective Order. On September 22, 1999, the Commission by Order adopted its standard protective order in this case.

In its application, MGE requested expedited treatment because the proposed tariffs will affect the upcoming winter heating season. The Commission, therefore, directed the Staff of the Missouri Public Service Commission to file its response on or before October 1, 1999. On September 24, 1999, Staff filed its Memorandum recommending that the application and tariff be approved. On September 27, 1999, the Office of the Public Counsel (OPC) filed a pleading in which it stated that it did not object to the one-year renewal.

On October 1, 1999, the Commission issued its Order Scheduling Hearing, setting an on-the-record presentation for October 7, 1999. On October 7, 1999, the on-the-record presentation was held. Robert J. Hack represented MGE. Douglas E. Micheel represented OPC. Thomas R. Schwarz, Jr., represented the Staff. The transcript was filed on October 8, 1999.

At the presentation, Michael Langston, MGE's Vice President for Gas Supply, testified that the seemingly belated nature of MGE's application herein was due to ongoing negotiations intended to replace the gas price hedging mechanism with another mechanism, a fixed price commodity PGA. Mr. Langston testified that this application and tariff were filed only when it became apparent that the fixed price commodity PGA could not be realized for the current heating season. Mr. Langston testified that last winter was mild in terms of cold weather and that a normal winter would result in significant gas price increases for ratepayers.

Mike Straub testified at the presentation on behalf of Staff that the application and tariff concerned herein were intended to protect ratepayers from the effects of possible substantial price increases during the winter heating season. Mr. Straub testified that a colder winter would act to drive up demand and prices.

The Commission has reviewed the application and tariff filing, the Staff memorandum, the pleading filed by Public Counsel, and the record of the on-the-record presentation, and has determined that renewing the price stabilization fund and capacity release incentive mechanism for an additional year is in the public interest. The Commission finds that good cause exists to approve the tariff on less than thirty days' notice.

IT IS THEREFORE ORDERED:

1. That Tariff No. 200000232, filed September 14, 1999, by Missouri Gas Energy, a division of Southern Union Company, consisting of the following tariff sheets is hereby approved for service on or after October 15, 1999:

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Third Revised Sheet No. 24.2 Canceling Second Revised Sheet No. 24.2

Third Revised Sheet No. 24.6 Canceling Second Revised Sheet No. 24.6

2. That this order shall become effective on October 15, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

**In the Matter of the Application of Osage Water Company for
Permission, Approval, and a Certificate of Convenience and
Necessity Authorizing it to Construct, Install, Own, Operate,
Control, Manage and Maintain a Sewer System for the Public
Located in Unincorporated Portions of Camden County, Mis-
souri, Golden Glade Subdivision.**

Case No. SA-99-268
Decided October 14, 1999

Sewer §2. The Commission found that the application filed by Osage Water for a certificate of public convenience and necessity authorizing Osage Water to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Camden County, Missouri, should be granted.

APPEARANCES

Gregory D. Williams, Attorney at Law, Highway 5 at 5-33, P.O. Box 431, Sunrise Beach, Missouri 65079, for Osage Water Company.

Gary W. Duff, Brydon, Swearingen and England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri, 65101, for City of Osage Beach.

Shannon Cook, Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Keith R. Krueger, Deputy General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Bill Hopkins, Senior Regulatory Law Judge

REPORT AND ORDER

I. Procedural History

On December 11, 1998, Osage Water Company (Osage) filed an application with the Missouri Public Service Commission (Commission), requesting the issuance of a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a sewer system for the public in unincorporated portions of

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Camden County, Missouri, known as Golden Glade Subdivision (proposed service area).

Because of an error by Osage in captioning the case, it was assigned case number WA-99-268. On December 17, 1998, Osage moved to change the caption of the case to reflect that Osage was seeking approval to provide sewer service only, not water service, and to correct the case designation to read SA-99-268 instead of WA-99-268. The Commission granted that motion on December 24, 1998.

On December 15, 1998, the Commission issued an order and notice of application, directing interested parties to file applications to intervene no later than January 14, 1999. On January 12, 1999, the City of Osage Beach (City) filed a timely application to intervene. On January 22, 1999, Osage filed its response to the application to intervene by the City, stating that it opposed the intervention of the City. The City's application to intervene was granted by order of the Commission entered on January 22, 1999, which order also set a prehearing conference for March 1, 1999, and a deadline for the parties to file a procedural schedule no later than March 11, 1999. On January 28, 1999, the Commission denied Osage's motion to deny the application to intervene by the City.

On February 3, 1999, Osage filed a motion to reconsider the order granting the application to intervene by the City. The Staff of the Missouri Public Service Commission (Staff) filed a response to Osage's motion on February 10, 1999, and the City filed a response to the same motion on February 16, 1999. The motion by Osage to reconsider the order granting the application to intervene by the City was denied on the record during the prehearing conference on March 1, 1999.

Osage filed its motion to establish a procedural schedule on March 11, 1999. On March 18, 1999, the Commission entered its order adopting a procedural schedule. Osage filed its direct testimony on March 17, 1999. On April 28, 1999, Osage filed its response to the first and second set of data requests by the City. On the same day, the City filed its motion to consolidate cases, motion to cancel procedural schedule, motion to set prehearing conference to establish a new procedural schedule in the consolidated cases, and motion for expedited treatment.

On April 30, 1999, the City filed its motion to compel answers to data requests and to reschedule the filing of rebuttal testimony. Osage filed its response to the motions filed by the City to consolidate cases, cancel the procedural schedule, set a prehearing conference to establish a new procedural schedule and for expedited treatment on May 6, 1999. The Staff filed its response to the same motion by City on May 10, 1999. On May 11, 1999, the Commission denied the motion to consolidate and the motion to compel and also granted the City until no later than May 21, 1999, to file its rebuttal testimony. On May 17, 1999, the Staff filed its motion to reconsider the order denying the motion by the City to reconsider and motion to compel. The Staff filed its rebuttal testimony on May 21, 1999. On May 21, 1999, the City filed the

rebuttal testimony of two witnesses. On May 26, 1999, Osage filed its response to the City's motion for rehearing and Staff's motion to reconsider. The Staff filed its surrebuttal testimony on June 8, 1999. On June 8, 1999, Osage filed its surrebuttal testimony.

On June 16, 1999, the City filed its motion for sanctions against Osage for failure to answer data requests. The motion is rendered moot by this report and order. All the parties on June 11, 1999, filed a hearing memorandum. On June 22, 1999, the Commission entered its order denying reconsideration of the Commission's May 11, 1999, order. On June 25, 1999, Osage filed its response to the City's motion for sanctions. The City, on June 28, 1999, filed its reply to the response by Osage to the City's motion for sanctions.

An evidentiary hearing was held June 17 and 18, 1999. All the parties were represented. On July 6, 1999, the Commission entered its order adopting briefing schedule and on July 7, 1999, entered a notice correcting the order adopting a briefing schedule, ordering, *inter alia*, that initial briefs should be filed no later than July 22, 1999, and reply briefs should be filed no later than August 12, 1999.

At the hearing, Exhibit Number 12 was reserved for a copy of any Department of Natural Resources (DNR) violations by Osage, which was filed July 22, 1999, and Exhibit Number 13 was reserved for a copy of any (DNR) violations by the City, which was filed July 14, 1999. All of the late-filed exhibits are received and made a part of the record of this matter.

II. Issues

The authority for the issuance by the Commission of a certificate of convenience and necessity to provide sewer service is contained in Section 393.170 RSMo¹. Subsection 1 of that statute states in part, "...No...sewer corporation shall begin construction of a...sewer system without first having obtained the permission and approval of the commission." Subsection 3 of that statute states in part, "The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such..." convenience and necessity exists.

The courts have held that "necessity," as used in the term "convenience and necessity," does not mean essential or absolutely indispensable, but rather that an additional service would be an improvement justifying the cost and that the inconvenience to the public occasioned by the lack of a utility is so sufficiently great as to amount to a necessity. See *State ex rel. Public Water Supply District No. 8 v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980); *State ex rel. Intercon Gas v. Public Service Commission*, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993)(*Intercon*), and *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973).

¹ All further statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

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In *Re Tartan Energy*, 3 Mo.P.S.C.3d 173, 177 (Sept. 16, 1994) (Tartan Energy Company case), articulated the legal standard to be met by an applicant for a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. See also *Re Intercon Gas, Inc.*, 30 Mo. P.S.C.(N.S.) 554, 561 (June 28, 1991); *State ex rel. Intercon Gas v. Public Service Commission*, loc. cit. This standard has also been historically applied to sewer certificate cases. See *Re M.P.B. Inc.*, 28 Mo. P.S.C. (N.S.) 55, 73 (November 15, 1985).

As discussed below, the Commission has determined that Osage has met its burden of proof under the legal standards articulated by the Commission and the courts for the grant of a certificate of public convenience and necessity. For the reasons stated herein, the Commission will grant Osage's application for a certificate of public convenience and necessity.

III. Discussion

A. Osage Water Company Proposal

Osage is a Missouri corporation duly organized and existing under the laws of the State of Missouri with its principal office and place of business located at Highway 54 West, Osage Beach, Missouri 65065. It is a public utility proposing to render sewer service to the public under the jurisdiction of the Commission in the proposed service area. In its application, Osage stated that it currently holds two certificates of authority issued by the Commission in case numbers WA-97-110 (Cimmarron Bay) and WA-98-36 (Cedar Glen).

The proposed service area is legally described as Golden Glade Subdivision, which consists of all of the Southeast Quarter of the Southeast Quarter, and parts of the Northeast Quarter of the Southeast Quarter, and the Southwest Quarter of the Southeast Quarter of Section 6, Township 39 North, Range 16 West, County of Camden, State of Missouri. Osage's engineering witness, William P. Mitchell (Mitchell), testified that Golden Glade is a new development project owned by an owner of and the attorney for Osage. (Mitchell, Dir. Test., p. 7) The project is located on Lake Road KK-33 near Tan-Tar-A Resort in Camden County, Missouri. The project will eventually contain about 100 lots; 13 lots have been laid out in the first phase. (Id., p. 8)

In its application and feasibility study, Osage proposed a recirculating sand filter system which will be constructed in treatment modules designed to serve approximately 30 single family homes each. Each resident in the subdivision would be connected to a septic tank, and each septic tank would be connected to a gravity effluent collection sewer which would transmit the effluent to the sand filter. All this would be done with an initial investment of \$500 per customer, according to Osage.

B. Is there a need for service?

In the Hearing Memorandum filed on June 11, 1999 (Memorandum), Osage, Staff, City, and the Office of the Public Counsel (OPC) all agreed that there was a public need for sanitary sewer service in the proposed service area. Thus, there is no issue as to this criteria.

C. Is Osage qualified to provide the service?

In the Memorandum, Osage stated that it was qualified to provide sewer service to the public in the Golden Glade Subdivision. Staff, City and OPC all agreed that Osage was not qualified to provide sewer service to the public in the Golden Glade Subdivision.

In the *Tartan Energy Company* case, the Commission, when referring to deciding the question of whether a company was qualified to provide a utility service, stated that "The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers," citing *Intercon*. There are no competing suppliers in the proposed service area, thus the Commission is required only to analyze the qualifications of Osage.

Osage presented evidence as to its experience in the water and sewer utility industry along with its technical experience and knowledge regarding engineering and safety. Osage also showed that it had the ability to properly construct and operate a sewer system for the proposed service area. This evidence was substantial and unrefuted.

Mitchell testified extensively concerning Osage's qualifications. Mitchell stated that he had been with Osage since 1987 when it was originally formed by his parents and him to provide regulated water utility service in the Lake of the Ozarks area. (Dir. Test., p. 4) Mitchell stated that he was a member of the Board of Directors of Osage and participated in all meetings that affected the policies and management of Osage, and that he is involved in the day-to-day operations of Osage.

Osage has both an existing water tariff and an existing sewer tariff on file with and approved by the Commission. A rate case is to be filed before the Commission in the fall of 1999. Osage therefore has the necessary tariffs on file with the Commission under which it will provide sewer service in the proposed service area.

Mitchell noted that Osage had recently received authority from the Commission to expand its water service in 1992 in case number WA-92-141 (Sunrise Beach), in 1994 in case number WA-94-132 (part of the City of Osage Beach and part of Camden County), and in 1998 in cases number WA-97-110 (Chelsea Rose) and WA-98-36 (Cedar Glen). Osage was also authorized to provide sewer utility service in cases number WA-97-110 (Cimmarron Bay) and WA-98-36 (Cedar Glen). (Id. p. 5)

Mitchell testified that Osage's president is an attorney whose practice includes real estate, taxation, and public utilities; the attorney is also the developer of the property within the proposed service area. (Mitchell, Dir. Test., p. 5) Mitchell said

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that Osage has one or two employees who perform construction of new systems, service connections, and repair of existing lines and systems, and Osage owns a mini-excavator and a bobcat for use in new construction and repairs. Mitchell testified that he was the vice-president of operations for Osage and that he is the principal of Jackson Engineering and Water Laboratory Company. Mitchell stated that he holds a Class A license, the highest type of license available, from the Missouri Department of Natural Resources (MDNR) for both water and wastewater. Osage therefore possesses the necessary technical expertise with which to operate not only the physical facilities needed for the proposed service area, but also the necessary general overhead and support staff required to conduct its water and sewer utility operations.

Mitchell said that Osage has an operation contract with both Jackson Engineering and Water Laboratory Company under the terms of which those companies provide regular operation, maintenance, and testing of all of Osage's water supplies and sewage treatment facilities. The two companies also provide basic office operations for Osage, including secretarial support, telephone, meter reading, and billing.

Osage currently owns two sewage treatment facilities of the same recirculating sand filter design as that proposed for the Golden Glade service area, and one of those is of the extended aeration type. Mitchell stated that he had experience operating both kinds of systems as well as numerous other sewage treatment systems, including forty or more recirculating sand filters. Mitchell testified regarding the history, workings and development of recirculating sand filters, including the fact that MDNR has been promoting the use of that technology.

Mitchell's testimony at the hearing more than adequately displayed his knowledge of water and sewer systems, plus his knowledge of the operation of the equipment needed to run a water and sewer system. This experience is valuable to the operation of any water and sewer system. Osage and its principals have substantial knowledge regarding engineering, safety, and the technical ability and equipment to provide the service needed for the proposed sewer system.

D. Does Osage have the financial ability to provide the service?

In the Memorandum, Osage stated that it had the financial ability to provide the sewer service. Staff and OPC both agreed that they had no position since Staff had not received annual reports² from Osage or other information sufficient to form an opinion. The City stated that Osage did not have the financial ability to provide the service.

²The Commission takes official notice that annual reports for 1997 and 1998 have since been filed by Osage.

The feasibility study that Osage filed with its Application in this case revealed all the financial information the Commission needs to know. Osage has one paragraph on how the proposed service will be financed:

The Golden Glade sewer systems will be paid for and contributed by the Developer, and the Company will rebate to the Developer the sum of \$500.00 per residential dwelling if, as, and when connected to the sewer system, up to the actual cost of construction of the sewage treatment facility. The Developer is willing to accept said payments in either cash, preferred stock or long term debentures previously authorized by the Commission. Therefore, no additional capital appears to be necessary for the acquisition of this system.

Mitchell stated that Osage will only make an investment of \$500 for each new home in the proposed service area. Since this will probably occur over several years, Osage will not have to come up with a substantial amount of money at any particular time. Thus, the proposed financing plan for the project leaves the risk of the failure of the development with the project developer rather than requiring a high dollar investment by Osage. Mitchell stated that Osage's monthly revenues range from \$8000 to \$12,000 on the current customer base which should provide enough revenue to handle this development. In addition to that, Mitchell stated that the developer owned the proposed service area free and clear of liens.

Mitchell testified that Osage's revenues for the first five months of 1999 were 167% of revenues for the same period in 1998, i.e., that the 1999 revenues matched and increased by 67% the revenues of 1998. Mitchell stated that the MDNR recently approved Osage to receive a \$421,000 loan on another project. This does not directly relate to the financial ability of Osage to develop the facilities for the proposed service area, but it does show that Osage's financial condition is sound. Staff witness Martin Hummel (Hummel) stated that Osage's application showed the financial ability of Osage to provide the proposed service.

The Commission agrees with Mitchell that, simply put, there are no financial ability issues raised by the Application in this case.

Osage has the burden of proof to demonstrate its financial ability and has presented sufficient evidence on that issue; the Commission must therefore conclude that Osage has demonstrated its financial qualifications.

E. Is Osage's proposal economically feasible?

In the Memorandum, Osage stated that its proposal was economically feasible. Staff, OPC, and City all agreed that Osage's proposal was not economically feasible.

Osage prepared and attached a feasibility study to its Application, which calculated the anticipated financial impact on Osage of the extension of sewer service to Golden Glade. Included in the feasibility study was an estimate of revenues and

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expenses for a five-year period. This study showed that Osage's proposal is economically feasible at Osage's current tariff rate.

Osage presented testimony showing that the feasibility study was based on an extensive rate evaluation performed in case number SA-94-54 (parts of the Villages of Sunrise Beach and Laurie; part of Camden County). That case included an in-depth estimation of the cost of the operation of recirculating sand filter sewage systems. The proposed rate for Golden Glade, according to Osage, represents the best estimate available of the actual cost of service, including a return on capital.

The *Tartan Energy Company* case requires the Commission to analyze the economic feasibility of a proposal by asking whether the risk of the failure of the development lies with the investors or the ratepayers. The proposal in this case directly shifts the burden to Osage's investors by limiting Osage's investment to \$500 per customer, regardless of the actual cost of the systems, and by requiring that those customers be placed in service before the investment is made by Osage. If Osage has underestimated the economic feasibility of the project, the loss will be borne by Osage and the project developer (i.e., the investors) and not by Osage's ratepayers.

Osage has the burden of proof to demonstrate the economic feasibility of this proposal and has presented sufficient evidence on that issue; the Commission must thus conclude that Osage has demonstrated that the proposal is economically feasible.

F. Does Osage's proposal promote the public interest?

In the Memorandum, Osage stated that its proposal was in the public interest. Staff, OPC, and City all agreed that Osage's proposal was not in the public interest.

Staff correctly pointed out that "...this case is not whether [Osage] or the City is the more qualified applicant in this case; the issue is whether [Osage] has satisfied the requirements of the *Tartan Energy Company* case." That case stands for the proposition that a positive finding for the first four standards will, in most cases, support a finding that granting an application for a certificate promotes the public interest.

Again, there is no other company, private or public, which is ready, willing and able to furnish sewer service to the proposed service area. For instance, the City tried to inject an irrelevant issue into the proceedings by alleging that it was going to serve Golden Glade. The Commission questions this proposition since there are parts of the City itself which do not have City water service.

The only other alternative to granting Osage the certificate it requests is, obviously, to deny it. If that happened, then this sewer system would be turned over to a homeowners' association; there is no other entity available to provide sewer service to Golden Glade. The Commission is of the opinion that, in this instance, it

is better to have a regulated investor-owned utility providing sewer service than an unregulated homeowners' association.

IV. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. The Commission finds that there is a need for sewer service in the proposed service area.
2. The Commission finds that Osage is qualified to provide the service.
3. The Commission finds that Osage has the financial ability to serve the proposed service area.
4. The Commission finds that Osage's proposal is economically feasible.
5. The Commission finds that Osage's proposal promotes the public interest.

V. Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

1. Osage is a public utility and a sewer corporation subject to the Commission's jurisdiction under section 386.250 RSMo, and section 393.170 RSMo.
2. There is a need for sewer service in the service area that Osage proposes to serve.
3. Osage is qualified to provide the proposed service.
4. Osage has the financial ability to provide the service.
5. Osage's proposal to serve the proposed service area is economically feasible.
6. Osage's proposal to serve the proposed service area will promote the public interest.
7. Osage's proposal satisfies all of the criteria enunciated in the *Tartan Energy Company* case as set forth above, and the certificate should be granted.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 12 and 13 are hereby received into the record.
2. That any motions (including the motion filed on June 16, 1999, by the City of Osage Beach for sanctions against Osage Water Company) which have not been previously ruled upon, if any, are hereby denied.

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3. That the Application filed by Osage Water Company for a certificate of public convenience and necessity authorizing Osage to construct, own, operate, control, manage, and maintain a sewer system for the public located in an unincorporated area of Camden County, Missouri, as more fully described in its Application, is hereby granted.

4. This Report and Order shall become effective on October 26, 1999.

5. That this case may be closed on October 27, 1999.

Lumpe, Ch., Crumpton, and Drainer, CC., concur;

Murray and Schemenauer, CC., dissent, with separate dissenting opinions; certify compliance with the provisions of Section 536.080, RSMo 1994.

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

The Applicant, Osage Water Company (OWC), has not met the legal standard required for this Commission to grant a certificate of convenience and necessity. The standard articulated in *In Re Tartan Energy*, 3 Mo.P.S.C.3d 173 (Sept. 16, 1994) (Tartan) and historically followed by this Commission requires a finding of five elements, as set forth in the Report and Order herein. The burden of proving the existence of each of those five elements lies with OWC. Each element is essential. Absence of even one of the five elements should result in denial of the application.

While OWC has failed to satisfy the requirements of even one of the five elements necessary for the Commission to grant a certificate of convenience and necessity, this Opinion will focus primarily on the issues of qualification and financial capacity of OWC.

The requirement that an applicant be qualified to provide service is extremely important for protection of the public. An applicant should provide credible evidence of ability to design, construct and operate the facilities and manage the business properly. Compliance with requirements of the Commission and other governmental agencies is one aspect of properly operating a sewer facility. OWC provided very little, if any, credible evidence of qualification to provide the service. Staff and the City of Osage Beach, on the other hand, presented substantial evidence that OWC has little experience in operating sewage treatment plants and that those it has operated have failed to provide adequate treatment. Staff's evidence was based upon OWC's existing water and sewer utility operations and history of the applicant's performance. Staff presented evidence of numerous violations of Missouri Department of Natural Resources requirements, as well as repeated failure of OWC to follow the requirements of this Commission. OWC has demonstrated a pattern of disregard for permitting and certification requirements and has failed to meet even the Commission's annual reporting requirements. Staff correctly points out that OWC

“seems to regard the law as an annoying technicality that they [sic] should not have to comply with The conduct of the Company is part of a pattern of misconduct that the Commission should not countenance by the granting of a certificate of authority.” Staff’s Reply Brief, 6, 7.

The record is also appallingly devoid of any evidence of financial ability. At the very least an applicant must provide credible evidence of existing financial condition and the impact of the proposed project upon the applicant’s financial condition. OWC provided nothing more than bald allegations of financial qualification. Those allegations were supported by no evidence, not even the Commission-mandated annual reports for 1997 and 1998. The conclusion that OWC has met its burden to prove financial capability strains credulity.

The record, as a whole, speaks loudly that the public interest will not be served by granting this certificate.

**DISSENTING OPINION OF
COMMISSIONER ROBERT G. SCHEMENAUER**

I respectfully dissent from the majority opinion in this case. I have grave concerns regarding Osage Water Company’s (OWC) financial integrity. The financial statements presented during this proceeding were so lacking in material representations and supporting detail that I cannot conclude, as the majority did, that OWC has the financial capability to serve the proposed service area.

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In the Matter of the Application of Union Electric Company d/b/a Ameren UEM and Ozark Border Electric Cooperative for Approval of a Written Territorial Agreement Designating the Boundaries of Each Electric Service Supplier within Portions of Bollinger, Butler, Carter, Dunklin, Iron, Madison, New Madrid, Reynolds, Ripley, Stoddard and Wayne Counties, Authorizing the Sale, Transfer, and Assignment of Certain Electric Distribution Facilities, Easements and Other Rights, Generally Constituting the Applicants' Electric Utility Business Associated with its Customers Transferred Pursuant to the Territorial Agreement

Case No. EO-99-599
Decided October 19, 1999

Electric §6. The Commission found the following were not detrimental to the public interest and therefore should be approved: a) the territorial agreement boundaries remain the same; b) AmerenUE customers listed in the joint application will be transferred to Ozark in accordance with the existing agreement; c) the existing Ozark members in the AmerenUE service area will not be transferred from Ozark to AmerenUE; no structure being served by Ozark will be transferred to AmerenUE without the express consent of the owner of the structure and the consent provision will apply to current owners of Ozark-served structures and their successors in title; d) any Ozark member in the AmerenUE service area may request to be transferred to AmerenUE and Ozark shall not withhold its consent to such transfer; e) if it is uneconomical or technically infeasible for AmerenUE to serve a structure at the time a transfer is requested, then Ozark agrees to continue to serve said structure until AmerenUE is able to implement the transfer with no charge to the new customer for such a transfer; f) Applicants will work together to transfer Ozark facilities in the AmerenUE service area in a manner that maximizes the benefits of the territorial agreement; g) if an Ozark member builds a residence on property owned by that member and presently served by Ozark and said residence is to be occupied by a relative of the owner of said property, then this new residence may also be served by Ozark; h) Ozark will pay AmerenUE \$974,000; and i) Water District No. 1 will remain as an Ozark member, but may elect at any time to transfer electric service to AmerenUE.

APPEARANCES

William B. Bobnar, Attorney at Law, One Ameren Plaza, 1901 Chouteau Avenue, P.O. Box 149 (MC 1310), St. Louis, Missouri 63166-6149, for Union Electric Company d/b/a AmerenUE.

Victor S. Scott and *Rodric A. Widger*, Attorneys at Law, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 305 East McCarty Street, P.O. Box 1438, Jefferson City, Missouri 65102-1438, for Ozark Border Electric Cooperative.

Mark A. Kennedy, Attorney at Law, Kennedy and Kennedy, P.O. Box 696, 1165 Cherry Street, Poplar Bluff, Missouri 63901, for Ozark Border Electric Cooperative.

Shannon Cook, Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for the Office of the Public Counsel and the public.

Dennis L. Frey, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Missouri Public Service Commission.

Patricia D. Perkins, Attorney at Law, Hendren & Andrae L.L.C., 221 Bolivar St., P.O. Box 1069, Jefferson City, Missouri 65102, for the Stoddard County Intervenor.

Gary W. Duffy, Attorney at Law, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456.

SENIOR REGULATORY LAW JUDGE: Bill Hopkins

REPORT AND ORDER

Procedural History

On June 16, 1999, Union Electric Company d/b/a AmerenUE (AmerenUE) and Ozark Border Electric Cooperative (Ozark)(jointly, Applicants) filed their joint application for approval of their agreement contained in a document entitled Territorial Agreement (territorial agreement).

The Applicants requested the Missouri Public Service Commission (Commission) to issue an order: a) approving the territorial agreement; b) authorizing the Applicants to perform in accordance with the terms and conditions of the territorial agreement; c) finding that the territorial agreement shall not impair AmerenUE's certificates of convenience and necessity, except as specifically limited by the territorial agreement; d) waiving the Commission's billing practices rule and allowing the Applicants to disconnect electric service to a customer who fails to pay the final bill of the other Applicant; e) granting Applicants the authority to change electric service providers for certain customers under the terms and conditions of the territorial agreement pursuant to sections 394.312, 394.315 and 393.106 RSMo¹; f) granting Applicants the authority to transfer certain property under the terms and conditions of the territorial agreement pursuant to section 393.190 RSMo; g) authorizing AmerenUE to extinguish all certificates of convenience and necessity under which AmerenUE operates its retail electric business in Butler County and certain land sections in Dunklin, New Madrid and Stoddard Counties; h) authorizing AmerenUE to terminate its retail electric service to the public in Butler County and certain land sections in Dunklin, New Madrid and Stoddard Counties as a public utility subject to the jurisdiction of the Commission and, in connection therewith, relieving AmerenUE of all public utility obligations with respect to its retail electric utility business in Butler County and certain land

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

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sections in Dunklin, New Madrid and Stoddard Counties pursuant to said certificates of convenience and necessity; and i) terminating all other duties, obligations and conditions which have resulted from or have been imposed by law or because of the Commission's jurisdiction over AmerenUE as an electric utility with respect to AmerenUE's retail electric business in Butler County and certain land sections in Dunklin, New Madrid and Stoddard Counties.

On June 24, 1999, the Commission entered its order and notice, stating, *inter alia*, that proper parties should be given notice and an opportunity to intervene, that any interested party wishing to do so shall file an application no later than July 14, 1999, and that the parties may file a procedural schedule no later than July 16, 1999.

On July 9, 1999, the Office of the Public Counsel (OPC) filed its request for local hearing, citing consumer interest in this matter. Applicants did not file a response.

On July 13, 1999, the City of Poplar Bluff (Poplar Bluff) timely filed its application to intervene. On August 16, 1999, the City of Malden (Malden) untimely filed its application to intervene. On August 26, 1999, the Stoddard County Intervenors² (SCI) untimely filed their application to intervene. The Commission granted intervention to Poplar Bluff, Malden and SCI on August 4, August 31, and September 7, 1999, respectively.

On August 3, 1999, the Commission entered its order scheduling local hearing which scheduled a local public hearing in Dexter, Missouri, on August 19, 1999. This hearing was held as ordered.

On July 16, 1999, the parties filed an abbreviated proposed procedural schedule. On August 4, 1999, the parties filed a revised proposed procedural schedule. On August 10, 1999, the Commission issued its order, which, *inter alia*, rejected the parties' proposed procedural schedule and established its own procedural schedule.

On August 11, 1999, all the parties filed their motion to reconsider the procedural schedule and to request expedited consideration. On August 17, 1999, the Commission granted, for good cause shown, extension of the date for ruling on the territorial agreement beyond the statutory 120-day limit and also granted the parties' motion to reconsider, adopting a procedural schedule which set the evidentiary hearing for September 17, 1999. On August 31, 1999, the Commission ordered the date of the evidentiary hearing changed to September 22, 1999.

On September 8, 1999, all the parties filed a motion to suspend the procedural schedule in part and to request expedited consideration. The Commission granted the motion and, *inter alia*, set the evidentiary hearing for October 8, 1999.

Stipulation and Agreement

On October 4, 1999, the parties filed a unanimous stipulation and agreement, signed by Applicants, Staff of the Missouri Public Service Commission (Staff),

² The Stoddard County Intervenors are about four hundred residents of Stoddard County.

OPC, SCI, Malden and Poplar Bluff. On October 8, 1999, the parties filed a corrected unanimous stipulation and agreement (stipulation), signed by Applicants, Staff, OPC, SCI, Malden and Poplar Bluff, which corrected a minor typographical error. It is attached as Attachment A.

The stipulation generally stated that all the parties had reviewed the joint application and associated territorial agreement and had considered the positions of each other concerning the issues raised by OPC, Malden and Poplar Bluff in their prepared testimony and by Malden, Poplar Bluff and SCI in their respective applications to intervene.

AmerenUE and Ozark stated that they have agreed to a revised territorial agreement (RTA) as follows: a) the territorial agreement boundaries remain the same; b) AmerenUE customers listed in the joint application will be transferred to Ozark in accordance with the existing agreement; c) the existing Ozark members in the AmerenUE service area will not be transferred from Ozark to AmerenUE. No structure being served by Ozark will be transferred to AmerenUE without the express consent of the owner of the structure and the consent provision will apply to current owners of Ozark-served structures and their successors in title; d) any Ozark member in the AmerenUE service area may request to be transferred to AmerenUE and Ozark shall not withhold its consent to such transfer; e) if it is uneconomical or technically infeasible for AmerenUE to serve a structure at the time a transfer is requested, then Ozark agrees to continue to serve said structure until AmerenUE is able to implement the transfer with no charge to the new customer for such a transfer; f) Applicants will work together to transfer Ozark facilities in the AmerenUE service area in a manner that maximizes the benefits of the territorial agreement; g) if an Ozark member builds a residence on property owned by that member and presently served by Ozark and said residence is to be occupied by a relative of the owner of said property, then this new residence may also be served by Ozark; h) Ozark will pay AmerenUE \$974,000; and i) Water District No. 1 will remain as an Ozark member, but may elect at any time to transfer electric service to AmerenUE.

AmerenUE, Ozark, Staff, OPC and SCI stated that the RTA is in the public interest and therefore should be approved. Poplar Bluff and Malden took no position on this issue, but will not oppose approval of the RTA as described in the stipulation. Furthermore, AmerenUE, Ozark, Staff, OPC and SCI stated that their belief that the RTA is in the public interest is supported by the facts contained in the previously filed testimony of AmerenUE, Ozark, Staff and OPC.

AmerenUE, Ozark, Staff, OPC and SCI further stated that the customer exchange from AmerenUE to Ozark in accordance with the RTA is in the public interest and therefore should be approved. Malden and Poplar Bluff took no position on this issue, but will not oppose approval of the RTA as described in the stipulation.

AmerenUE, Ozark, Staff, OPC and SCI further stated that the facilities exchange between AmerenUE and Ozark in accordance with the RTA is in the public interest and therefore should be approved. Malden and Poplar Bluff took no position on this

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issue, but will not oppose approval of the RTA as described in the stipulation.

AmerenUE, Ozark and Staff further stated that AmerenUE's illustrative tariffs as shown in Exhibit G to the joint application are acceptable in format and substance, with the following exceptions: a) illustrative tariff sheet number 26.15 shall be modified by adding to the list Section 31, Township 23 North, Range 11 East and such addition shall not have a delta³; and b) illustrative tariff sheet number 26.22A shall not be put into effect. The parties stated that within thirty (30) days of the issuance of a report and order approving the RTA, AmerenUE is to file revised tariff sheets consistent with the illustrative tariffs, but incorporating the above modifications. AmerenUE, Ozark, Staff and OPC stated that they believe that the revised tariff sheets are in the public interest and therefore should be approved. Malden, Poplar Bluff and SCI took no position on this issue, but will not oppose approval of the RTA as described in the stipulation.

On October 6, 1999, Applicants filed their amendment to the joint application. This amendment deleted from the original application Exhibit A (territorial agreement) and replaced it with the RTA as a new Exhibit A; Exhibit D (deletions to AmerenUE's service territory) and replaced it with a revised version thereof as a new Exhibit D; and Exhibit F (list of customers to be transferred from Ozark to AmerenUE) but did not replace it since no customers are being thus transferred. All other provisions of the original application remained unchanged.

On October 8, 1999, the Commission convened an evidentiary hearing wherein all of the testimony and exhibits confirmed every point in the stipulation.

The Commission, after hearing, specifically finds that the Commission's designation of electric service areas is in the public interest pursuant to Section 394.312.2, RSMo. The Commission also specifically finds that approval of the RTA in total is not detrimental to the public interest pursuant to Sections 394.312, 394.315 and 393.106, RSMo.

IT IS THEREFORE ORDERED:

1. That the joint application filed June 16, 1999, as amended by amendment to joint application filed October 6, 1999, is approved.
2. That the stipulation and agreement, Attachment A to this order, is approved.
3. That the revised territorial agreement in total is not detrimental to the public interest, pursuant to Sections 394.312, 394.315 and 393.106, RSMo, and is approved.

³ A ▲ was used on illustrative tariff sheet number 26.15 with this explanation: "In the underscored Sections/U.S. Surveys above, Company's right and obligation to serve in New Madrid County is limited by the terms of the Territorial Agreement between Company and Ozark Border Electric Cooperative...."

4. That Union Electric Company d/b/a AmerenUE and Ozark Border Electric Cooperative are authorized to perform in accordance with the terms and conditions of the revised territorial agreement.

5. That the revised territorial agreement will not impair Union Electric Company d/b/a AmerenUE's existing certificates of convenience and necessity, except as specifically limited by the revised territorial agreement.

6. That the Commission waives 4 CSR 240-13.010 *et seq.* and authorizes Applicants to disconnect the service of any customer who fails to pay the final bill of the other Applicant.

7. That Union Electric Cooperative d/b/a AmerenUE and Ozark Border Electric Cooperative are authorized to change electric suppliers for certain of their customers as set forth in the revised territorial agreement, pursuant to Sections 394.312, 394.315 and 393.106, RSMo.

8. That Union Electric Company d/b/a AmerenUE and Ozark Border Electric Cooperative are authorized to sell, transfer and assign part of their franchise, works or system pursuant to the revised territorial agreement.

9. That Union Electric Company d/b/a AmerenUE shall extinguish all certificates of convenience and necessity under which it operates its retail electric service to the public in Butler County and the land sections in Dunklin, New Madrid and Stoddard counties as shown on Exhibit D, Section I of the joint application, as amended.

10. That Union Electric Company d/b/a AmerenUE shall terminate its retail electric service to the public in Butler County, and the land sections in Dunklin, New Madrid and Stoddard counties as shown on Exhibit D, Section I of the joint application, as amended, as a public utility subject to the jurisdiction of the Missouri Public Service Commission and, in connection therewith, that Union Electric Company d/b/a AmerenUE shall be relieved of all public utility obligations with respect to its retail electric service to the public in Butler County, and the land sections in Dunklin, New Madrid and Stoddard counties as shown on Exhibit D, Section I of the joint application, as amended, pursuant to its certificates of convenience and necessity.

11. That Union Electric Company d/b/a AmerenUE is authorized to enter into, execute and perform in accordance with the terms of all other documents reasonably necessary and incidental to the performance of the transactions that are the subject of the revised territorial agreement.

12. That Union Electric Company d/b/a AmerenUE shall file its revised tariff sheets with respect to its service area in Butler, Dunklin, New Madrid and Stoddard counties, pursuant to the unanimous stipulation and agreement, consistent with the illustrative tariff sheets filed with the joint application, as amended, within 10 days of the effective date of the report and order.

13. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties involved. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded this transaction in any later proceeding.

14. That this order shall become effective on October 29, 1999.

15. That this case shall be closed on November 1, 1999.

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Lumpe, Ch., Crumpton, Murray, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994. Schemenauer, C., absent

Editor's Note: Attachment A, the Stipulation and Agreement in this case, has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Application of Alma Long Distance, L.L.C. for
a Certificate of Service Authority to Provide IntraLATA and
InterLATA Interexchange and Basic Interexchange Telecom-
munications Services.***

*Case No. TA-2000-240
Decided October 19, 1999*

Telecommunications §3.2, Certificates §46.2. The Commission approved a certificate of service authority to provide intrastate, interexchange telecommunications services for an incumbent local exchange company to whom the Commission had previously issued a temporary certificate of service authority.

**ORDER APPROVING INTEREXCHANGE
CERTIFICATE OF SERVICE AUTHORITY**

Alma Long Distance L.L.C (ALD) applied to the Public Service Commission on September 17, 1999, for a certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services in Missouri under § 392.440, RSMo 1994¹. ALD filed a revised Application on September 27. ALD is a Limited Liability Company authorized to do business in Missouri, with its principal office located at P.O. Box 206, South County Road, Alma, Missouri 64001.

ALD asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. ALD also requested expedited treatment of its application so that its application could be approved on or before October 5. The Commission issued a Notice of Applications and Opportunity to Intervene on September 28, directing parties wishing to intervene to file their requests by October 8.

*See page 357 for another order in this case.

¹All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

ALD requested that the Commission grant it certificate of service authority and approve its tariff no later than October 5. ALD and a recommendation filed by Staff indicated that it was essential that ALD begin providing interexchange service no later than October 21. This expedited treatment was necessary because (1) AT&T has not yet decided to provide 1+ intraLATA service, (2) the need to make modifications to the IntraLATA Toll Dialing Parity Implementation Plans of Alma Telephone Company by October 20, and (3) the need to give customers timely notification. Because the time established for intervention, October 8, had not yet passed, Staff recommended that the Commission grant ALD a temporary certificate of service authority to provide interexchange telecommunications services.

On October 5, the Commission issued an Order Approving Temporary Interexchange Certificate of Service Authority and Order Approving Tariff. That order issued a temporary certificate of service authority to ALD and approved ALD's tariff. The order also indicated that the Commission would consider the issuance of a permanent certificate of service authority after other interested parties have had an opportunity to intervene.

The October 8 deadline for interventions has now passed and no requests for intervention have been submitted to the Commission. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the verified application. The Commission finds that it is now appropriate to issue a certificate of service authority to ALD to replace the temporary certificate previously issued.

IT IS THEREFORE ORDERED:

1. That Alma Long Distance L.L.C is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That the temporary certificate of service authority granted to Alma Long Distance, L.L.C. on October 5, 1999, shall be canceled effective upon the effective date of the certificate of service authority granted by this order.

3. That Alma Long Distance L.L.C is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived: **Statutes**

- | | |
|--------------------------|---|
| 392.240(1) | - ratemaking |
| 392.270 | - valuation of property (ratemaking) |
| 392.280 | - depreciation accounts |
| 392.290 | - issuance of securities |
| 392.310 | - stock and debt issuance |
| 392.320 | - stock dividend payment |
| 392.340 | - reorganization(s) |
| 392.330, RSMo Supp. 1998 | - issuance of securities, debts and notes |

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Commission Rules

4CSR 240-10.020	- depreciation fund income
4CSR 240-30.010(2)(C)	- rate schedules
4CSR 240-30.040	- Uniform System of Accounts
4CSR 240-32.030(1)(B)	- exchange boundary maps
4CSR 240-32.030(1)(C)	- record keeping
4CSR 240-32.030(2)	- in-state record keeping
4CSR 240-32.050(3)	- local office record keeping
4CSR 240-32.050(4)	- telephone directories
4CSR 240-32.050(5)	- call intercept
4CSR 240-32.050(6)	- telephone number changes
4CSR 240-32.070(4)	- public coin telephone
4CSR 240-33.030	- minimum charges rule
4CSR 240-33.040(5)	- financing fees

4. That this order shall become effective on October 29, 1999.

5. That this case may be closed on November 1, 1999.

Morris L. Woodruff, Regulatory Law Judge by delegation of Authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

In the Matter of the Application of Northeast Missouri Long Distance, L.L.C. for a Certificate of Service Authority to Provide IntraLATA and InterLATA Interexchange and Basic Interexchange Telecommunications Services.*

Case No. TA-2000-242
Decided October 19, 1999

Telecommunications §3.2, Certificates §46.2. The Commission approved a certificate of service authority to provide intrastate, interexchange telecommunications services for an affiliate of an incumbent local exchange company to whom the Commission had previously issued a temporary certificate of service authority.

*See page 360 for another order in this case.

ORDER APPROVING INTEREXCHANGE
CERTIFICATE OF SERVICE AUTHORITY

Northeast Missouri Long Distance, L.L.C. (NELD) applied to the Public Service Commission on September 20, 1999, for a certificate of service authority to provide intraLATA and interLATA interexchange and basic interexchange telecommunications services in Missouri under § 392.440, RSMo 1994¹. NELD filed a revised Application on September 27. NELD is a Limited Liability Company authorized to do business in Missouri, with its principal office located at 718 S. West Street, P.O. Box 98, Green City, Missouri 63545.

NELD asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. NELD also requested expedited treatment of its application so that its application could be approved on or before October 5. The Commission issued a Notice of Applications and Opportunity to Intervene on September 28, directing parties wishing to intervene to file their requests by October 8.

NELD requested that the Commission grant it certificate of service authority and approve its tariff no later than October 5. NELD, and a recommendation filed by Staff, indicated that it was essential that NELD begin providing interexchange service no later than October 21. This expedited treatment was necessary because (1) AT&T has not yet decided to provide 1+ intraLATA service, (2) the need to make modifications to the IntraLATA Toll Dialing Parity Implementation Plans of Northeast Missouri Rural Telephone Company and its affiliate, Modern Telecommunications Company by October 20, and (3) the need to give customers timely notification. Because the time established for intervention, October 8, had not yet passed, Staff recommended that the Commission grant NELD a temporary certificate of service authority to provide interexchange telecommunications services.

On October 5, the Commission issued an Order Approving Temporary Interexchange Certificate of Service Authority and Order Approving Tariff. That order issued a temporary certificate of service authority to NELD and approved NELD's tariff. The order also indicated that the Commission would consider the issuance of a permanent certificate of service authority after other interested parties have had an opportunity to intervene.

The October 8 deadline for interventions has now passed and no requests for intervention have been submitted to the Commission. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496

¹All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

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(Mo. App. 1989). Since no one has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the verified application. The Commission finds that it is now appropriate to issue a certificate of service authority to NELD to replace the temporary certificate previously issued.

IT IS THEREFORE ORDERED:

1. That Northeast Missouri Long Distance, L.L.C. is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That the temporary certificate of service authority granted to Northeast Missouri Long Distance, L.L.C. on October 5, 1999, shall be canceled effective upon the effective date of the certificate of service authority granted by this order.

3. That Northeast Missouri Long Distance, L.L.C. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.240(1)	- ratemaking
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290	- issuance of securities
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.340	- reorganization(s)
392.330, RSMo Supp. 1998	- issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.010(2)(C)	- rate schedules
4 CSR 240-30.040	- Uniform System of Accounts
4 CSR 240-32.030(1)(B)	- exchange boundary maps
4 CSR 240-32.030(1)(C)	- record keeping
4 CSR 240-32.030(2)	- in-state record keeping
4 CSR 240-32.050(3)	- local office record keeping
4 CSR 240-32.050(4)	- telephone directories
4 CSR 240-32.050(5)	- call intercept
4 CSR 240-32.050(6)	- telephone number changes
4 CSR 240-32.070(4)	- public coin telephone
4 CSR 240-33.030	- minimum charges rule
4 CSR 240-33.040(5)	- financing fees

4. That this order shall become effective on October 29, 1999.

5. That this case may be closed on November 1, 1999.

Morris L. Woodruff, Regulatory Law Judge by delegation of Authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

**In the Matter of the Application of McCord Bend Water Company
for a Rate Increase Pursuant to the Small Company Rate
Increase Procedure at 4 CSR 240-2.200, Authority to Transfer
Assets, and for Cancellation of Its Certificate and Tariff.**

Case No. WR-2000-241
Decided October 19, 1999

Water §16. Where a small water utility was in extremely poor condition, had been abandoned by its operator, leaving its customers in danger of a loss of service, and a rate increase was necessary in order to make possible the sale of its system to a municipality, the increase and sale were in the public interest and would be approved.

**ORDER GRANTING RATE INCREASE, APPROVING TARIFF,
AND AUTHORIZING TRANSFER OF ASSETS**

Procedural History

On September 20, 1999, McCord Bend Water Company (McCord) filed its proposed tariff sheets, with an effective date of October 21, 1999, and cover letter seeking a rate increase pursuant to the Commission's small company rate increase procedure, Regulation 4 CSR 240-2.200(1)(D). The cover letter suggested that McCord also sought authority to sell its assets to the Village of McCord Bend (Village) and, upon consummation of that sale, sought cancellation of its tariffs and certificate.

On September 23, 1999, the Commission issued its Order Directing Filing, requiring McCord to file within ten days the agreement regarding the rate increase. The Order of September 23, 1999, also advised McCord that its requests for authority to transfer assets and for the cancellation of its tariffs and certificate must be sought by filing appropriate applications with the Commission, in compliance with the Commission's procedural rules at 4 CSR 240-2. On September 23, 1999, McCord filed the agreement.

On October 8, 1999, the Staff of the Missouri Public Service Commission (Staff) filed a motion seeking authority for McCord to transfer its water system assets to the Village. Staff asserts in its motion that the sale is in the public interest and that McCord, Staff, the Office of the Public Counsel (OPC), and the Village all support the proposed sale. Staff further states in its motion that James E. Ames, owner of McCord, has essentially abandoned the water system and that McCord's customers

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are in danger of not receiving adequate water service if the sale is not approved. Staff further asserts that the agreement of the parties, supporting McCord's proposed rate increase, is conditioned upon the transfer of the water system from McCord to the Village.

On October 12, 1999, Staff filed its Memorandum recommending approval of McCord's proposed rate increase. In its Memorandum, Staff reiterates that Mr. Ames has essentially abandoned the water system.

On October 13, 1999, OPC filed its Statement of Position, stating that OPC supports Staff's motion herein and "believes that, due to the urgent need for the transfer, a waiver of the requirements of Commission Rules 4 CSR 240-2.050(1)(F) and 240-2.060(5) would in this case promote the public interest."

Findings of Fact

As required by the small company rate increase procedure, 4 CSR 240-2.200, McCord initiated the rate increase request by a letter received by the Commission's Staff on April 12, 1999. Thereafter, by letter dated May 31, 1999, McCord notified each of its 67 customers of the rate increase request. McCord's customers were invited to direct comments or questions to either the Staff or OPC within thirty days of the date of the notice. The correspondence section of the official Commission case file documents some 23 consumer contacts regarding this matter. Of these, three expressed opposition to the proposed rate increase. The others concerned poor service. McCord's letter of May 31, 1999, also advised its customers that a public hearing could be requested. No request for a public hearing was received.

McCord Bend filed on September 23, 1999, an agreement (the Agreement) as to the proposed rate increase, executed by McCord Bend, the Village, OPC, and the Staff. The Agreement contemplates the purchase of McCord's water system assets by the Village, but only on condition that McCord's rates are first raised to an acceptable level. The Agreement states that McCord initiated the present rate increase procedure with the assistance of Staff. Staff's intention has been to assist Mr. Ames in selling the water system to the Village, due to the "extremely poor condition of the Company." *Agreement*, at page 1.

Staff conducted an audit of McCord Bend and determined that the Company's books support an annual revenue increase of \$12,881, with the assumption that the Village is the operator of the system.¹ Staff supports the granting of such an increase only on condition that the water system is sold to the Village. The Agreement noted that Mr. Ames, owner of McCord, had "abandoned" the system. *Agreement*, at page 4.

¹ That is, the calculation does not provide for any return on assets.

Attached to the Agreement is a copy of a Management and Acquisition Agreement (M&AA), entered into on September 2, 1999, by McCord, the Village, and Mr. Ames. It provides that the Village would assume full management and control of the water system as of the date of the M&AA. It further provides that Ames will transfer all of his title and interest in the water system to the Village within 24 hours of an order of this Commission approving a rate increase.

On October 8, 1999, Staff filed its motion seeking authorization for McCord's sale of its water system to the Village. Staff states therein that it filed the motion because McCord was unable or unwilling to file appropriate applications as required by Commission rule, 4 CSR 240-2. Staff reiterates that Ames has abandoned the system and states further that customers are in danger of inadequate water service. In fact, as the M&AA attached to the Agreement shows, the Village took over operation of the water system on September 2, 1999. Staff states that the Village's operation of the water system has been satisfactory in all respects. In fact, the Village has authorized a bond issue to fund capital improvements to the water system.

Staff's motion states that McCord's "business registration was forfeited in 1989 for failure to file annual reports with the Secretary of State[.]" The company's actual name was McCord Bend Utility Company rather than McCord Bend Water Company. The sale of the water system will deprive Stone County, Missouri, of approximately \$7.00 in annual tax revenue. Staff urges approval of the sale as required by the public interest.

On October 12, 1999, Staff filed its Memorandum recommending that the rate increase be granted, the proposed tariff approved, and the sale of assets approved. The Staff reiterated therein the points previously made in the Agreement and in its motion of October 8, 1999.

Finally, on October 13, 1999, OPC filed its Statement of Position urging the Commission to grant Staff's motion.

Conclusions of Law

The Commission has jurisdiction over rate increase requests by private water utilities and over the transfer or sale of assets by such utilities. Sections 393.150 and 190, RSMo 1994. Pursuant to its authority at Section 386.410.1, RSMo Supp. 1998, the Commission has promulgated its rule relating to Small Company Rate Increases, 4 CSR 240-2.200.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the pleadings.

The Commission has reviewed the Agreement and cover letter, the attachments to the Agreement and cover letter, Staff's motion and Memorandum, the proposed tariff filed by McCord Bend, and OPC's Statement of Position. The facts available

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to the Commission show that the actual cost of providing water service requires additional annual revenue in the amount herein contemplated. Therefore, the Commission concludes that the proposed water rate increase, recommended by Staff and supported by OPC, is just and reasonable and will approve it.

The Commission has reviewed the proposed tariff sheet filed by McCord Bend and determines that it is intended to implement the rate increase herein approved. Therefore, the Commission will approve the proposed tariff sheet.

The facts available to the Commission also show that the public interest requires the prompt transfer of the water system assets from McCord to the Village. Therefore, the Commission will approve the transfer of those assets. Upon completion of the transfer, the Staff shall immediately so advise the Commission so that McCord's certificate and tariffs may be cancelled.

IT IS THEREFORE ORDERED:

1. That the annual revenue increase of \$12,881 sought by McCord Bend Water Company and set out in the Agreement executed by McCord Bend Water Company, the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, and the Village of McCord Bend, is hereby approved, effective October 21, 1999.

2. That the proposed tariff sheet filed by McCord Bend Water Company on September 20, 1999, Tariff No. 000000261, is approved for service rendered on or after October 21, 1999. The specific sheet approved is:

P.S.C. Mo. No. 1

2nd Revised Sheet No. 4, Cancelling 1st Revised Sheet No. 4

3. That the motion filed by the Staff of the Missouri Public Service Commission on October 8, 1999, is granted.

4. That the parties herein are authorized to do all lawful acts necessary to consummate the sale and transfer of water system assets contemplated in the Agreement from McCord Bend Water Company, including its successors, owners, or trustees, to the Village of McCord Bend.

5. That the Staff of the Missouri Public Service Commission shall promptly file an appropriate pleading in this case to advise the Commission that the transfer referred to above has been completed.

6. That this order shall be effective on October 21, 1999.

Lumpe, Ch., Crumpton, Drainer, and Murray, CC., concur.

Schemenauer, C., absent.

Thompson, Deputy Chief Regulatory Law Judge

**In the Matter of the Application of Southern Union Company for
Authority to Acquire and Merge with Pennsylvania Enterprises,
Inc., and, in Connection Therewith, Certain Other Related
Transactions**

Case No. GM-2000-43
Decided October 21, 1999

Gas §6. The Commission approved a stipulation and agreement whereby a gas utility was authorized to acquire and merge with an out-of-state utility.

ORDER APPROVING STIPULATION AND AGREEMENT

On July 21, 1999, Southern Union Company (Southern Union) filed an Application asking that the Commission grant it the authority to acquire and merge with Pennsylvania Enterprises, Inc. Southern Union requested that the Commission approve its application no later than November 1. In order to comply with Southern Union's request for expedited consideration, the Commission issued an order on August 2 that directed the Staff of the Public Service Commission (Staff) to file its recommendation regarding Southern Union's application no later than October 1. That order also provided that the Office of the Public Counsel (Public Counsel) might also file its recommendation on that date.

On October 1, Southern Union filed a Motion to Extend Time for Filing of Recommendations. That motion indicated that Southern Union, Staff and Public Counsel were engaged in discussions that it hoped would lead to a stipulated resolution of the application, thus eliminating the need for a Staff Recommendation. Southern Union asked that the deadline for the Staff Recommendation be extended to October 8, in the event that a stipulated resolution was not filed by October 6. On October 6, Southern Union, Staff and Public Counsel filed a Unanimous Stipulation and Agreement (Agreement).

The Agreement purports to resolve all outstanding issues in this case. The parties indicate that the Agreement imposes certain modifications and conditions on the merger and that subject to those modifications and conditions, the merger is not detrimental to the public interest. The parties requested that the Commission approve the merger by October 15, or as soon thereafter as possible.

At the request of the Commission, Staff filed a Memorandum explaining its rationale for entering into the Stipulation and Agreement on October 15. Southern Union filed a response to Staff's explanatory memorandum on October 18. Public Counsel represented that it does not intend to file a response to Staff's memorandum.

In the Stipulation and Agreement, contingent upon the Commission accepting the Stipulation and Agreement, the parties waived their rights to present testimony,

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to cross-examine witnesses, to present oral argument or briefs, to have the transcript read by the Commission and to judicial review. The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on October 6, 1999 by Southern Union Company, the Staff of the Public Service Commission and the Office of the Public Counsel, is hereby approved as a resolution of all issues in these cases (See Attachment 1).

2. That Southern Union Company is authorized to acquire and merge with Pennsylvania Enterprises, Inc., subject to the terms and conditions contained within the Stipulation and Agreement approved in this order.

3. That this order shall become effective on November 1, 1999.

Lumpe, Ch., Crumpton, Murray, and Drainer, CC., concur
Schemenauer, C., absent
Woodruff, Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of Missouri American Water Company's Class Cost of Service and Rate Design*

Case No. WO-98-204

Decided November 2, 1999

Rates §§3, 111, 121. In the Report and Order, the Commission deferred its decision on the rate design of the Company until its next general rate case and ordered the Company to maintain the data necessary to perform district-specific cost of service studies in its next general rate case.

APPEARANCES

W.R. England III and Dean Cooper, Brydon, Swearingen & England, P.O. Box 456, Jefferson City, Missouri 65102, for the Missouri-American Water Company.

Jeremiah D. Finnegan, Finnegan, Conrad, & Peterson, L.C., 1209 Penntower Office Center, 3100 Broadway, Kansas City, Missouri 6411, for the Platte County Intervenor.

Stuart Conrad, Finnegan, Conrad, & Peterson, L.C., 1209 Penntower Office Center, 3100 Broadway, Kansas City, Missouri 6411, for Ag Processing Inc.

James M. Fischer, James M. Fischer, P.C., 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, for the Water District Intervenor.

Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for the City of Warrensburg, Missouri.

John Coffman, Deputy Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel.

Bill Haas, Deputy General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Bill Hopkins, Senior Regulatory Law Judge

REPORT AND ORDER I. PROCEDURAL HISTORY

In Missouri-American Water Company's (MAWC's) prior rate case, i.e., case number WR-97-237, the Missouri Public Service Commission (Commission) reviewed rate design proposals. Two primary rate design methodologies were studied. Single-tariff pricing (STP) is where rates are based on a cost of service study that uses simple wholesale averaging of the utility's revenue requirement across all of the areas that the utility serves, whether the areas are geographically connected or not. District-specific pricing (DSP) is where rates are calculated in part on district-

*The Commission, in an order issued on December 7, 1999, denied a rehearing in this case. On January 18, 2000, this case was appealed on Cole County Circuit Court (00CV323063). This case was appealed to Western District Court of Appeals on August 28, 2000 (WD58978).

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specific studies which appropriately identify district-specific costs, identify and allocate joint and common costs, and include the necessary depreciation studies. However, the record in case number WR-97-237 did not include district-specific cost of service studies that quantified the impacts of reverting to DSP, as advocated by some of the Intervenor. As a result of this void in the record in case number WR-97-237, the Commission established this proceeding to develop the data to quantify the differences between DSP and STP.

In order to receive and evaluate class cost of service studies and rate design proposals, on November 20, 1997, the Commission issued its Order Establishing Class Cost of Service Study and Rate Design Case and Proceeding Notice (Order). In that Order, the Commission initiated the subject case "...to establish the costs MAWC incurs in serving its various classes of customers in preparation for the company's next rate case." The Commission stated that the cost of service studies submitted must be fully developed, district-specific studies. The Order granted intervention to the following parties: Ag Processing Inc.; The City of Warrensburg; The Cities of Riverside, Parkville, Platte Woods, Lake Waukomis, and Houston Lake (collectively, Platte County Intervenor); Public Water Supply District No. 1 of Andrew County; Public Water Supply District No. 1 of Buchanan County; Public Water Supply District No. 2 of Andrew County; Public Water Supply District No. 6 of Platte County; and Public Water Supply District No. 1 of DeKalb County (collectively, Water District Intervenor).

Subsequent to the filing of prepared testimony and schedules, a Hearing Memorandum was filed on October 23, 1998, which identified the following issues for resolution by the Commission:

1. Should the Commission issue a decision in this case regarding the methodology upon which MAWC's customer rates are to be designed, which would then be applied in MAWC's next general rate case, or should such a decision be made in MAWC's next general rate case?
2. If the Commission issues a decision in this case regarding the methodology upon which MAWC's rates are to be designed, should the Commission select a methodology consistent with STP design or DSP design?
3. If the Commission issues a decision in this case selecting a methodology upon which MAWC's rates are to be designed that is consistent with district-specific rate design, should the Commission also select one of the district-specific studies presented by the parties in this case as being the appropriate study? If so, which of the studies should the Commission select?
4. If the Commission issues a decision in this case selecting a methodology upon which MAWC's rates are to be designed that is consistent with district-specific rate design, and selects one of the studies as the appropriate study, should the Commission also order changes to MAWC's existing rates, or should the necessary changes to the existing rates be made in the context of MAWC's next general rate case?

5. If the Commission does not issue a decision in this case regarding the methodology upon which MAWC's rates are to be designed, or issues a decision in this case selecting such a methodology that is consistent with single tariff rate design: (a) should MAWC or the Staff of the Commission (Staff) be required to prepare and present district-specific revenue requirements analyses, cost allocation studies, class cost of service studies and rate design proposal in MAWC's next general rate case; or (b) should MAWC be required to continue to maintain its books and records in a manner that would allow parties to its next general rate case to be able to prepare and present such district-specific analysis, studies and proposals?

Evidentiary hearings were held on November 16 and 17, 1998. At the hearing, MAWC, Staff, and the Office of the Public Counsel (OPC) each presented the results of their independent district-specific cost of service studies.

Initial briefs were filed on January 19, 1999, and reply briefs were filed on February 3, 1999. On August 11, 1999, the Commission issued its Order Directing Filing, and ordered the parties to submit proposed Findings of Fact, Conclusions of Law and Ordered paragraphs by September 10, 1999. The deadline for this filing was subsequently extended to September 24, 1999, at the request of some of the parties.

II. FINDINGS OF FACT

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

A. Timing of Rate Design Decision

In this proceeding, the Staff, OPC, and the Water District Intervenors have argued that it would be more appropriate for the Commission to defer its decision on STP or DSP until MAWC's next rate case. MAWC, Ag Processing, the Platte County Intervenors, and the City of Warrensburg, on the other hand, have supported the position that the Commission should resolve this fundamental issue in this proceeding, and apply the results in the next general rate case. For the reasons stated herein, the Commission has decided to defer its decision on the rate design to be applied in the next rate case until it has a fully developed record in that future rate proceeding¹.

In MAWC's prior rate case (i.e., case numbers WR-97-237 and SR-97-238), several parties urged the Commission to follow through on its previously announc-

¹ MAWC filed such a rate proceeding on October 15, 1999, under case number WR-2000-281.

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-ed policy and take the final step to adopt STP for MAWC². Other parties proposed that the Commission use DSP for MAWC. Although the Commission's decision in case number WR-97-237 adopted a rate design that used STP, the Commission declined to announce what approach it would use during MAWC's next rate case. The record indicates that it is anticipated that the St. Joseph water treatment plant currently under construction may be added to the rate base in MAWC's next rate proceeding. This, in itself, is sufficient reason for the Commission to defer its decision on this issue.

Schedule A of the Hearing Memorandum in this proceeding summarizes the results of the parties' various cost of service studies. The results are helpful in demonstrating the cost of service on a district-specific basis. For example, the cost of service studies generally show that the St. Joseph District has been paying rates that are approximately ten to eleven percent (10-11%) higher than its district-specific costs. To a lesser extent, the Joplin and Warrensburg districts have also been supporting the other districts of St. Charles, Parkville, Mexico, and particularly Brunswick, when viewed on a district-specific basis.

The Commission generally agrees with the Staff's observation that the cost of service information in this proceeding might serve as a useful benchmark for evaluating STP or DSP in MAWC's next rate case. For example, the data discussed above concerning the St. Joseph area could be relevant if the Commission is requested to revert to DSP when the St. Joseph plant comes on line.

Given the significant uncertainties associated with the exact amount of rate base that will be included in rates in the next rate case, and the effects, if any, of the proposed merger of MAWC's parent with the parent of St. Louis County Water Company, the Commission will not attempt to decide the rate design issue until the next rate case.

B. Cost of Service Studies in MAWC's Next General Rate Case

Based upon the resolution of Issue No. 1 above, it is unnecessary to address the now moot Issue Nos. 2-4. However, Issue No. 5 addresses the type of cost of service studies that should be performed and data that should be maintained for use in the next rate case. The Commission will address this issue in the hope of promoting a full development of the record in MAWC's next rate case.

OPC has requested that MAWC and the Commission Staff be directed to prepare district-specific cost of service studies in the next general rate proceeding. MAWC and Staff have opposed this request. However, MAWC has indicated that it will make available the data necessary to perform district-specific cost of service studies, in the event other parties desire to complete such studies themselves.

² As the Commission has previously found, "...the proposed move toward single tariff pricing for Missouri-American and all of its districts, as jointly agreed to by the Staff, Missouri-American and OPC and as, to some degree, supported by all intervenors, is therefore in the public interest." Report & Order, Case No. WR-95-205, p. 33.

After careful consideration, the Commission has determined that it will not order MAWC or Staff to complete any particular type of cost of service study in the next general rate case. However, the Commission will direct that MAWC maintain the data necessary to perform district-specific cost of service studies for use by other parties to that proceeding.

III. CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over this matter pursuant to Chapters 386 and 393, RSMo 1994 and Supp. 1998. The Commission will not prejudice any rate design issues for future rate cases and thus limit its options at this time regarding how rates should be designed in the next rate case. Nonetheless, the Commission will order MAWC to maintain cost of service data in a form that can be used by other parties to develop district-specific cost of service studies.

IT IS THEREFORE ORDERED:

1. That the Commission will defer its decision on the rate design of Missouri-American Water Company until its next general rate case.
2. That Missouri-American Water Company shall maintain the data necessary to perform district-specific cost of service studies in its next general rate case.
3. That this order shall become effective on November 12, 1999.
4. That this case may be closed on November 15, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

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In the Matter of a Review of the Technical and Financial Provisioning of Calling Scopes in a Competitive Environment.*

Case No. TW-98-356
Decided November 2, 1999

Telecommunications §1. The Commission found that the review of the technical and financial provisioning of calling scopes in a competitive market could be concluded because of the changes in the telecommunications industry including the elimination of Community Optional Service, the implementation of intraLATA presubscription, the entry into the competitive local exchange market by several companies, and the establishment of a contested case to examine the Metropolitan Calling Area service (Case No. TO-99-483).

ORDER CLOSING CASE

The Commission established this case to investigate calling scopes in a competitive environment. On October 27, 1998, the parties filed a report titled, "The Technical and Financial Provisioning of Calling Scopes in a Competitive Environment." That report was compiled from information gathered by the parties, their cumulative knowledge, and through a series of public hearings held at various locations around the state. The Commission appreciates the time, effort, and expertise that the parties have provided in preparing this report.

Since the case was established, the telecommunications industry within the state of Missouri has continued to change. For example, Community Optional Service has been eliminated, intraLATA presubscription is being implemented, numerous competitive local exchange companies have entered the market, and a contested case has begun to examine the Metropolitan Calling Area service (Case No. TO-99-483). Therefore, the Commission finds that this investigation should be concluded and this case may now be closed.

IT IS THEREFORE ORDERED:

1. That the report of the parties is accepted.
2. That the investigation into calling scopes in a competitive environment is concluded.
3. That this order shall become effective on November 16, 1999.
4. That this case may be closed on November 17, 1999.

*See page 161, Volume 7 MPSC 3d for another order in this case.

Nancy Dippell, Senior Regulatory Law Judge, by delegation of authority pursuant to 4 CSR 240-2.120(1) (November 30, 1995) and Section 386.240, RSMo 1994.

In the Matter of the Joint Application of Mid-Missouri Holding Corp., a Delaware Corporation, and Mid-Missouri Telephone Company a Missouri Corporation, for an Order Authorizing: 1) Mid-Missouri Holding Corp. to Purchase or Acquire, Take or Hold All of the Issued and Outstanding Capital Stock of Mid-Missouri Telephone Company, and 2) for Mid-Missouri Telephone Company to Execute a Deed of Trust, Security Agreement and Financing Statement to Secure a Loan to Complete the Transaction.

Case No. TF-99-578
Decided November 4, 1999

Security Issues § 69. The Commission approved a stock purchase agreement for all the stock of public utility company by a holding company and a pledge of the stock and property of the public utility to secure financing obtained by the holding company for the stock purchase agreement.

ORDER APPROVING SALE OF STOCK AND FINANCING

On May 27, 1999, the Mid-Missouri Holding Corp. (MMH) and Mid-Missouri Telephone Company (Mid-Missouri), and certain individuals and trustees (collectively the “Applicants”), filed their joint application for authority to carry out their agreement and in particular requesting the Commission’s Order: 1) authorizing MMH and Mid-Missouri to enter into and perform their obligations under a stock purchase agreement; 2) authorizing MMH to purchase all of the currently issued and outstanding common stock of Mid-Missouri; and 3) authorizing Mid-Missouri to execute and deliver a Deed of Trust, Security Agreement and Financing Statement related to the financing of the purchase price.

Applicants also filed a motion for a protective order seeking to protect confidential and proprietary information, including documents containing the purchase price of the stock and non-public financial information. The Commission granted a protective order on June 9, 1999.

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The Commission also issued a *Notice of Deficiency* on June 9, 1999, requesting additional information to be provided by the Applicants. On June 17, 1999, the Applicants filed their *Response of Joint Applicants to Notice of Deficiency* in which they provided the additional information.

Also, on June 9, 1999, the Commission issued an *Order Directing Notice*. The Records Department of the Commission was directed to send notice of the application to interested government officials and Mid-Missouri was directed to provide direct notice to its customers. Mid-Missouri filed a *Notice of Compliance* on July 15, 1999, that included a certification and copy of the notice given by Mid-Missouri.

On September 24, 1999, the Commission's Staff completed its investigation of the proposed sale of stock and financing and filed its memorandum recommending approval of the application.

After reviewing the application and Staff memorandum, the Commission determined a hearing would be required and issued its *Order Scheduling Hearing* on October 8, 1999. Mid-Missouri requested that the hearing originally scheduled and noticed for October 27, 1999, be rescheduled to October 28, 1999. This request was granted by the Commission on October 26, 1999. A hearing was held on October 28, 1999, with all interested parties in attendance.

Mid-Missouri is a public utility engaged in the business of providing telecommunications service to approximately 3,900 customers in twelve exchanges located in portions of five Missouri counties. Mid-Missouri was incorporated under the name Marshall Junction Telephone Company on May 18, 1928, in the State of Missouri. The name of the corporation was changed to Mid-Missouri Telephone Company by amendment to the Articles of Incorporation filed with the Missouri Secretary of State on November 22, 1932. Mid-Missouri, prior to the matters presented in the pending application, was a family-owned corporation.

MMH is a Delaware corporation, with its principal office in New York, New York. MMH is owned by CEA Capital Partners USA, L.P., a Delaware limited partnership, and CEA Capital Partners USA CI, L.P., a Cayman Islands limited partnership (CEA Capital). CEA Capital is a private equity investment fund that has previously made investments in various telecommunications and media companies, including rural telephone companies similar in size to Mid-Missouri.

MMH was formed, among other things, to purchase the issued and outstanding stock of Mid-Missouri. To facilitate the purchase, MMH will borrow certain sums from CoBank. As partial security for the loan MMH will execute and deliver a Pledge Agreement and Assignment of Stock to the bank and Mid-Missouri will execute and deliver a Deed of Trust Security Agreement and Financing Statement.

The Applicants stated that because the financing involved a loan to MMH and not to Mid-Missouri, adjustments would not be required to the financial statements of Mid-Missouri. Applicants also stated that no fees would be due the Commission under Section 386.300, RSMo 1994¹.

The Applicants also stated that there will be no impact from the sale of the stock of Mid-Missouri on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved are located.

The Applicants stated that the proposed acquisition of the stock of Mid-Missouri is not detrimental to the public interest. The Applicants stated that: Mid-Missouri will continue to do business under the same name and in much the same manner as it does currently; there will be no change in rates or methods of operation as a result of the stock acquisition; the present manager and employees will be retained; and Mid-Missouri's managerial abilities will be combined with the telecommunications expertise of the principals of MMH in order to effectively provide efficient and affordable service to the Mid-Missouri customers.

Staff indicated that with respect to the financing, its recommendation for approval was based on the projected cash flow of MMH and not the ability of Mid-Missouri to support the debt. Staff noted that MMH is generating significant cash flows from its operations to meet the covenants of its loan on a cash flow basis. Staff believes that financial resources necessary to operate the local telephone company will continue to be available to Mid-Missouri.

Staff also indicated that no change will occur in the local operations of Mid-Missouri, existing management and craft groups would be retained, and that there will be no restatement or adjustment of Mid-Missouri's financial statements for regulatory or rate-making purposes. Organizational costs related to the transaction will be recorded on the books of MMH, and will not affect rates.

Staff also believes, based on its investigation, that Mid-Missouri's level of service will be maintained, modernization plans will continue, and that no harm to the quality of service for Mid-Missouri's customers will result.

¹ Statutory references are to the Revised Statutes of Missouri 1994, unless noted otherwise.

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Information and testimony presented at the hearing in this matter on October 28, 1999, made it clear that revenues from Mid-Missouri's non-regulated cellular business are significant and increasing and provide substantial support for the transaction. Total revenues for Mid-Missouri provide significant cash flows that will be available through dividends to MMH to service the debt associated with the financing presented in this case.

The Commission has reviewed the application as supplemented, Staff's recommendation and the information and testimony presented at the hearing in this case. The Commission finds that the proposed sale of stock and financing as presented by the Applicants will have no adverse impact on the Missouri customers of Mid-Missouri. The Commission finds that the transaction is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the sale of stock as presented in the joint application of Mid-Missouri Telephone Company, Mid-Missouri Holding Corp., and certain individuals and trustees, filed on May 27, 1999, and supplemented on June 17, 1999, is approved.

2. That Mid-Missouri Telephone Company is authorized to execute and deliver a Deed of Trust, Security Agreement and Financing Statement, as presented in the joint application, as supplemented.

3. That Mid-Missouri Telephone Company shall file a notification with the Commission no later than ten days after the closing date of the transaction authorized by this order.

4. That this order shall become effective on November 16, 1999.

Lumpe, Ch., Drainer, Murray, and Schemenauer, CC., concur.

Crompton, C., absent.

Thornburg, Regulatory Law Judge

**In the Matter of the Application of Ozark Shores Water Company
for Permission, Approval, and a Certificate of Public C o n -
venience and Necessity Authorizing It to Construct, Install,
Own, Operate, Control, Manage and Maintain a Water and
Sewer System for the Public at Summerhaven Condominiums in
Miller County and a Water System for the Public in the Perdue
Development in Camden County.**

Case No. WA-99-99
Decided November 16, 1999

Water §2. The Commission vacated an earlier order dismissing the case for failure to prosecute, and granted a certificate of convenience and necessity pursuant to a unanimous stipulation and agreement.

ORDER APPROVING SECOND STIPULATION AND AGREEMENT

On September 9, 1998, Ozark Shores Water Company (Ozark) filed an application with the Commission pursuant to Section 393.170, RSMo 1994, and 4 CSR-240-2.060 requesting the Commission grant it a certificate of convenience and necessity to provide (a) regulated metered water service in an area known as the Perdue Development adjacent to its currently certificated area on Horseshoe Bend in Camden County and (b) regulated flat rate water service and sewer service to a condominium complex known as Summerhaven Condominiums in Miller County. On December 29, 1998, Summerhaven Condominium Owners Association (the Association) and Waterserv, Inc. (Waterserv) were allowed to intervene.

On April 21, 1999, the parties filed a nonunanimous Stipulation and Agreement (the first stipulation). The first stipulation was nonunanimous because Waterserv did not sign it. However, on April 22, Waterserv filed a letter in which it stated that it would not request a hearing, and in fact no party requested a hearing within the time allowed by 4 CSR 240-2.115, and the Commission treated the first stipulation as unanimous.

The first stipulation reflected the parties' agreement that the Commission should expeditiously grant Ozark a certificate of convenience and necessity for the Perdue Development, and authorize it to file tariffs adding that area to its service territory. The Commission approved the first stipulation in an order issued May 15, 1999.

On November 2, 1999, the parties filed a Unanimous Stipulation and Agreement (the second stipulation). The second stipulation reflects the parties' agreement that the Commission should: A) grant Ozark a certificate of convenience and necessity to provide water and sewer service at the Summerhaven Condominiums; B) authorize it to file tariffs adding that area to its service territory, setting rates, and establishing

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rules and regulations; and C) order Ozark to use agreed upon depreciation rates. Pursuant to Section 536.060, RSMo 1994, the Commission may accept the second stipulation as a resolution of the issues. The Commission has reviewed the second stipulation and verified application and finds the second stipulation to be reasonable and in the public interest and will, therefore, approve it.

On October 5, 1999, the Commission issued an order dismissing this case for failure to prosecute pursuant to 4 CSR 240-2.116. That order has not yet become effective, and in light of subsequent events, the Commission will vacate it.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement, Attachment A to this order, is hereby approved.

2. That Ozark Shores Water Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain water and sewer facilities and to render water and sewer service to a condominium complex known as Summerhaven Condominiums in Miller County as described by the map and metes and bounds description attached to its application filed on September 9, 1998.

3. That the certificate of convenience and necessity referenced in ordered paragraph 2 shall become effective simultaneously with the effective date of the tariff sheets required to be filed and approved pursuant to ordered paragraph 4.

4. That Ozark Shores Water Company shall, within 30 days of the effective date of this order, file with the Commission tariff sheets to reflect the additional service area granted herein, to reflect the stipulated rates, and to establish rules and regulations.

5. That nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on said property.

6. That the Commission reserves the right to consider the ratemaking treatment to be afforded the properties herein involved, and the resulting cost of capital, in any later proceeding.

7. That the Order Dismissing Case issued on October 5, 1999, is vacated.

8. That this order shall become effective on November 30, 1999

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Mills, Deputy Chief Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

In the Matter of the Application of Southwestern Bell Telephone Company for Authority to Transfer Certain Assets to SBCS Switches, Inc.*

Case No. TM-2000-219
Decided November 16, 1999

Telecommunications §4. The Commission approved a telephone company's application for authority to transfer certain assets to a wholly owned subsidiary.

ORDER APPROVING APPLICATION TO TRANSFER ASSETS

Southwestern Bell Telephone Company (SWBT) filed an application on September 7, 1999, for authority to transfer certain assets to SBCS Switches, Inc. (Switches, Inc.). Switches, Inc. is a Delaware corporation and is a wholly owned subsidiary of SWBT. Once the proposed transfer takes place, SWBT will distribute all of its stock in Switches, Inc. to SWBT's parent corporation, SBC Communications, Inc. (SBC). Thereafter SBC will merge Switches, Inc. into SBC Services, Inc. (Services, Inc.), with Services, Inc. being the surviving entity. Services, Inc. will utilize the assets that are the subject of SWBT's application, along with other assets, to provide centralized administrative support services to SWBT and other SBC subsidiaries.

On September 7, SWBT filed a motion requesting expedited review and approval of its application. SWBT requested that its application be approved by December 1, in order that SBC Services can begin providing services on January 1, 2000. In order to comply with SWBT's request for expedited consideration, the Commission issued an order on September 21, directing the Staff of the Public Service Commission (Staff) to file, no later than November 10, a recommendation regarding SWBT's application. That order also provided that the Office of the Public Counsel (Public Counsel) might also file its recommendations regarding the application on November 10.

On October 15, Staff filed a memorandum indicating that it had no objection to the proposed transaction and recommending approval of the application. On October 21, the Commission issued an Order Approving Application to Transfer Assets. That order had an effective date of November 2. On October 25, Public Counsel timely filed a Motion for Rehearing. Public Counsel's motion pointed out that the Commission had acted to approve the application without allowing Public Counsel an opportunity to comment on the application as it was allowed to do by the Commission's order of September 21.

*Please note that the Commission originally issued an order approving the transfer of assets on October 21, 1999 which was reflected in the Publications Minutes of November 18, 1999.

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On October 28, after considering Public Counsel's motion, the Commission issued an Order Granting Motion for Rehearing. That order set aside the Commission's Order Approving Application to Transfer Assets and allowed Public Counsel until November 5, to file its recommendations regarding SWBT's application. SWBT and Staff were allowed until November 12, to respond to Public Counsel's comments if they wished to do so.

On November 5, Public Counsel filed a letter in which it indicated that it has decided not to file any comments in this case and takes no position with regard to SWBT's application.

The Commission has reviewed the application, the accompanying documentation, and Staff's recommendation and finds that the proposed transfer of assets will have no adverse impact on the Missouri customers of SWBT. The Commission finds that the transaction is not detrimental to the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the Application of Southwestern Bell Telephone Company for Authority to Transfer Certain Assets to SBCS Switches, Inc. is approved.
2. That this order shall become effective on November 30, 1999.
3. That this case may be closed on December 1, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Woodruff, Regulatory Law Judge

**In the Matter of the Investigation into the Class Cost of Service and
Rate Design for Union Electric Company.**

Case No. EO-96-15
Decided November 18, 1999

Electric §§1, 9. Evidence, Practice and Procedure §8. Rates §119. The Commission approved a nonunanimous stipulation and agreement submitted by the parties which resolves all uncontested issues, not including the issue involving residential seasonal differentials and Rider E supplementary services, when no party requested a hearing on those uncontested issues.

Electric §1. Evidence, Practice and Procedure §§4, 26. Rates §119. Because Intervenor Laclede is requesting a change in the rate design previously found just and reasonable by the Commission, Laclede bears the burden of proof that the present residential seasonal differential is not just and reasonable, and that the proposed rates or rate design is just and reasonable.

Electric §§1, 9. Rates §119. The Commission denied Intervenor Laclede's request to open a new case to investigate Union Electric's Rider E supplementary service tariff because Laclede made no specific allegation of harm or proposal to change it tariff addressing Rider E Supplementary service and that same issue had recently been addressed in a complaint filed previously by Trigen-St. Louis.

REPORT AND ORDER

I. Procedural History

This case was established pursuant to the Commission's order in ER-95-411 to investigate the class cost of service and rate design of Union Electric Company d/b/a AmerenUE (UE or AmerenUE). The Commission's order in Case No. ER-95-411 made all parties in that case parties in this case. The parties to Case No. ER-95-411 included:

Missouri Public Service Commission Staff (Staff)
Office of the Public Counsel (Public Counsel)
Union Electric Company d/b/a AmerenUE
Monsanto Company¹
McDonnell Douglas Corporation
Anheuser-Busch, Inc.
MEMC Electronic Materials
Barnes and Jewish Hospitals²
Emerson Electric Company
Ford Motor Company
Holnam, Inc.
Husmann Refrigeration Company
ISP Minerals
River Cement Company (formerly known as RC Cement Company)
Asarco Inc.
The Doe Run Company
Cominco American
Missouri Retailers Association
UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp)

In Case No. EO-96-15, intervention was granted on December 29, 1995, January 25, 1999, and April 26, 1999, to the following additional parties:

Trigen-St. Louis Energy Corporation (Trigen-St. Louis)
Laclede Gas Company (Laclede)

¹ Group of Industrial Intervenors known as and hereinafter referred to as Missouri Industrial Energy Consumers (MIEC) includes Monsanto Company, Anheuser-Busch, Inc., MEMC Electronic Materials, Ford Motor Company, Holnam, Inc., Husmann Refrigeration Company, ISP Minerals, Adam's Mark Hotel, Alcoa Foil Products (Alumax, Inc.), The Boeing Company, General Motors Corporation, Mallinckrodt, Inc., Procter & Gamble, Manufacturing Company and Ralston Purina Company.

² Group of Industrial Intervenors known as and hereinafter referred to as Missouri Energy Group (MEG) includes Barnes-Jewish Hospital, River Cement Company and Emerson Electric Company.

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Friendship Village of South County³
Friendship Village of West County
Tesson Heights Enterprises
Village North
Cardinal Ritter Institute
Orchard House Partnership
State of Missouri – Attorney General’s Office
Adam’s Mark Hotel (a.k.a. HBE, Incorporated)
Alcoa Foil Products (a.k.a. Alumax, Inc.)
General Motors Corporation
Mallinckrodt, Inc.
Procter & Gamble Manufacturing Company
Ralston Purina Company

The Boeing Company was substituted as a successor party for its predecessor, McDonnell Douglas, on April 26, 1999.

On October 27, 1997, Staff of the Missouri Public Service Commission (Staff) filed a Status Report as requested by the Commission. Staff indicated that the parties had been collecting and preparing data necessary for the parties to perform class cost of service and rate design analyses. Staff also stated that it believed that evidentiary hearings could be scheduled in the summer of 1998 and requested that the Commission order an early prehearing conference for November 24, 1997. On October 29, the Commission issued its order scheduling the early prehearing conference on November 24 and requiring the parties to file a recommended procedural schedule or stipulation and agreement no later than December 15. The early prehearing conference was held on November 24 for the purpose of establishing a proposed procedural schedule but no matters were addressed on the record. On December 15, 1997, the parties submitted a proposed procedural schedule. In addition to the exchange of evidence, prehearing/settlement conference, hearing memorandums, and the evidentiary hearing schedule, the parties noted that they had informally agreed to exchange data and hold technical conferences on several dates prior to the filing of direct testimony. The Commission adopted the proposed procedural schedule setting the evidentiary hearing for September 28 through October 2, 1998.

On July 16, 1998, Staff filed a request for suspension of the procedural schedule. In its request, Staff noted that Public Counsel, AmerenUE, and several of the intervenors had met on July 13, 1998, to discuss the status of the case and

³Group of Industrial Intervenors known as and hereinafter referred to as Retirement Facilities Coalition includes Friendship Village of South County, Friendship Village of West County, Tesson Heights Enterprises, Village North, Cardinal Ritter Institute and Orchard House Partnership.

exchange information necessary to file testimony. Staff also stated that the parties had agreed that another technical conference would be scheduled on August 10, and that the filing of direct testimony by the scheduled date, July 31, could not be accomplished. Staff stated that the parties would file an amended schedule by August 17 when they would have a better idea of the information available and work remaining. On July 30, the Commission suspended the procedural schedule as requested and ordered the parties to file a proposed procedural schedule by August 17. AmerenUE filed a proposed procedural schedule on August 14. AmerenUE stated that the parties present at the August 10 technical conference either agreed to or did not object to the proposed procedural schedule. The Commission adopted this proposed procedural on September 1.

On February 5, 1999, the parties filed a joint motion to amend the procedural schedule permitting simultaneous filing of direct testimony regarding class cost of service by February 14 and simultaneous filing of direct testimony regarding rate design by March 4. Similarly, the parties recommended that the rebuttal testimony be simultaneously filed for class cost of service by March 19, and that rebuttal testimony be simultaneously filed for rate design by March 24. The Commission adopted these proposed amendments to the procedural schedule as requested.

A prehearing conference was held on March 29. On April 26, the evidentiary hearing was convened and the following pending motions were addressed. MIEC's motion to strike the rebuttal testimony of James C. Watkins on rate design, specifically on the issues of interruptible power and Rider E issues was filed on April 12. The Commission, after reviewing the motion and the responsive pleadings, denied MIEC's motion to strike. On April 15, Richard S. Brownlee, III, filed a motion to withdraw on behalf of his client Cominco American withdrawing as a party from this proceeding. The Commission granted leave to withdraw. On April 16, Staff filed a motion for leave to late file the hearing memorandum, which was due on April 15. Staff's motion for leave was granted.

After entries of appearance and preliminary matters, the parties requested additional time to complete negotiations, as they believed that they were near a settlement of the issues in this case. On April 27, the hearing reconvened and the parties notified the Commission that a Stipulation and Agreement had been reached on all issues except the residential seasonal differential and Rider E issues. The parties agreed that Laclede Gas Company (Laclede) should be permitted to cross-examine the witnesses giving testimony regarding residential seasonal differential and Rider E in this hearing. In exchange, Laclede agreed that it would waive any hearing in regard to the Nonunanimous Stipulation and Agreement that would be filed by the signatory parties memorializing their Stipulation and Agreement in principle. The Commission ordered the evidentiary hearing on the issues of residential seasonal differential and Rider E held on April 29.

On May 3, the signatory parties filed the Nonunanimous Stipulation and Agreement. On May 4, Laclede filed its waiver of its right to a hearing pursuant to

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4 CSR 240-2.115(3) regarding nonunanimous stipulations and agreements. On May 5, the Commission notified the parties of a hearing scheduled May 12 for the formal presentation of the Stipulation and Agreement. On May 11, Staff filed its memorandum explaining the basis upon which it entered into the Stipulation and Agreement. On May 11, the Commission directed the parties to prepare and present specific testimony or evidence regarding the Stipulation and Agreement at the hearing on May 12. On May 12, the formal presentation of the Stipulation and Agreement was held in an evidentiary hearing before the Commission.

II. Late-Filed Exhibits

At the hearing on April 29, the Commission admitted into evidence Exhibits 1 through 36. Also marked but not received into evidence were Exhibits 37 and 38. Exhibits 37 and 38 were taken as an offer of proof, pursuant to 4 CSR 240-2.130(3). Exhibits 39 and 40 were admitted into the record at the May 12 hearing.

On May 24, AmerenUE filed its late-filed Exhibit No. 41 entitled “Proof of Residential Rate Revenue and Bill Distributions.” On June 11, the Office of the Public Counsel (Public Counsel) filed its version of Exhibit No. 40 entitled “Distribution of Revenues Among Customer Classes” pursuant to the Commission’s request at hearing. Public Counsel’s late-filed exhibit will be marked as Exhibit No. 42. On June 25, MIEC filed a late-filed exhibit entitled “Revenue Requirement Shares” pursuant to the Commission’s request at hearing. This exhibit shall be marked Exhibit No. 43. No objections were received to the admission of late-filed Exhibits 41, 42, or 43. Therefore, the Commission shall admit late-filed Exhibit Nos. 41, 42, and 43 into the record.

III. Stipulation and Agreement

The signatory parties filed their Nonunanimous Stipulation and Agreement on May 3, 1999. The signatory parties include AmerenUE, Asarco Inc., The Doe Run Company, Utilicorp United d/b/a Missouri Public Service, Trigen-St. Louis Energy Corporation, Retirement Facilities Coalition, Public Counsel, Missouri Industrial Energy Consumers, Missouri Retailers Association, the State of Missouri by and through the Attorney General, Missouri Energy Group, and the Staff. The Stipulation and Agreement resolves all issues among the parties except the residential seasonal differential and the Rider E issues. Laclede requested, and was granted a hearing on April 29 regarding the issues of residential seasonal differential and Rider E. On May 4, Laclede submitted its waiver of a right to request a hearing pursuant to 4 CSR 240-2.115(3) on all other issues. Because no request for a hearing was received on the Stipulation and Agreement as it applies to all other issues except for residential seasonal differential and the Rider E issues, the Stipulation and Agreement as to all other issues may be considered unanimous pursuant to 4 CSR 240-2.115. The two remaining contested issues will be discussed in Section IV of this Report and Order.

The Stipulation and Agreement provides that the current distribution of class revenue requirements shall be adjusted by reducing the class revenue requirements of the Staff's proposed non-residential, non-lighting customer classes by the lesser of \$25,000,000, or the total revenue reduction ordered in Case No. EM-96-149, by an equal percentage of weather normalized current rate revenue. The Stipulation and Agreement also provides that after this first portion of the reduction, any portion of the revenue reduction that is in excess of \$25,000,000 shall be distributed to all non-lighting classes on an equal percentage basis. This reduction will be applied as an equal percentage reduction to each rate component, except the customer charges, of each rate schedule after making the rate design changes as agreed to in the Stipulation and Agreement. The Stipulation and Agreement specifically indicates the share of revenue reduction of each customer class.

The Stipulation and Agreement provides that the present residential monthly customer charge of \$5.75 shall be increased by \$1.50 to \$7.25, with the revenue-offsetting reduction to the current energy charge components. The signatory parties agree in the Stipulation and Agreement that there will be no changes to the charges on the optional Time-of-Day rate. The signatory parties further agree that the small general service customer charges (for both single-phase and three-phase service) shall be increased by \$1.50 in order to keep the level of the customer charge the same for both residential and single-phase small general service customers and to keep the three-phase customer charge at its present increment above the single-phase customer charge. Again, the signatory parties agree that there would be no changes to the charges on the optional Time-of-Day rate.

The Stipulation and Agreement further provides that the large primary service customer charge will be kept equal to the small primary service customer charge and that any adjustment to revenues that result from the overall rate reduction or from a change in the customer charge will be made by applying an equal percentage change to the energy charge components. The signatory parties agree that the adjustments to revenues from reducing the Rider B credits will be made by applying an equal percentage change to the demand charge components. Further, the signatory parties agree that corresponding adjustments would be made to the Interruptible Power Rate to maintain present relationship between the Large Primary Service Rate and the Interruptible Power Rate. Again, the signatory parties agree that there will be no change in the optional Time-of-Day adjustments.

The Stipulation and Agreement provides that the company and Staff will jointly work towards designing rates that will reduce the current primary/secondary rate differential between the large general service rate and the small primary service rate under specific conditions. The Stipulation and Agreement provides that the present Rider B energy credits shall be eliminated and where service is delivered and metered in a voltage level above primary, metered demand (kW), and energy (kWh) will be reduced by the Rider C adjustment factor of 0.68 percent prior to billing. Rider B demand credits for service delivered at a voltage of 138,000 volts or higher shall be

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decreased to \$0.95 per kW/month and for service delivered at a voltage of 34,500 or 69,000 volts shall be decreased to \$0.81 per kW/month.

The Stipulation and Agreement provides that the Interruptible Power Rate, presently referred to as service classification No. 10(M), will no longer be available to additional customers but will continue to be available to current interruptible customers through May 2000 billing period. Current Interruptible Power Rate 10(M) customers may transfer to another rate or the voluntary curtailment rider but may not thereafter return to the Interruptible Power Rate 10(M). The signatory parties agreed that the company and the industrial intervenors will enter into good faith discussions regarding alternative interruptible rate options. The signatory parties also agreed that no party to this agreement will object on procedural grounds to an application filed by any other party to initiate a case for consideration by the Commission of additional alternative rate options for interruptible customers that would be available no earlier than June 1, 2000.

UtiliCorp and Trigen-St. Louis are signatories to this agreement but the Stipulation and Agreement indicated that neither UtiliCorp or Trigen-St. Louis agree nor disagree with the terms and conditions of this Stipulation and Agreement. The Stipulation and Agreement also indicated that neither UtiliCorp or Trigen-St. Louis support nor oppose the adoption by the Commission of the terms and conditions agreed to by the other parties contained in this Stipulation and Agreement. Further, it is stated in the Stipulation and Agreement that neither UtiliCorp nor Trigen-St. Louis request a hearing with respect to the Nonunanimous Stipulation and Agreement terms and conditions. The State of Missouri, by and through the Attorney General's office, is not a signatory to the Stipulation and Agreement and has not filed an objection to the Stipulation and Agreement. The Stipulation and Agreement also stated that Laclede, who is also not a signatory party, has indicated that it has no objection to the terms of the Stipulation and Agreement as they relate to all other issues except the two issues specifically contested.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo (Cum. Supp. 1998). Based upon the Commission's review of the applicable law and the Stipulation and Agreement of the parties, the Commission concludes that the Stipulation and Agreement should be approved.

IV. Discussion Of Contested Issues

A. Residential Seasonal Differential

Residential seasonal differential refers to the residential rate for electric service, which is a different rate in different seasons. Union Electric's present residential rate design includes a single energy charge for all energy consumed during the four summer months of June through September and a two-step energy charge for energy consumed during the eight winter months October through May. During the winter months, there is an initial energy rate for consumption up to 750 kWh per month that

is referred to as the initial block rate. Also included in the winter months is a second block to which a reduced rate is applied for all consumption above 750 kWh per month; this rate is referred to as the tail block rate. The summer/winter tail block differential can be stated as a ratio that expresses the difference between the summer energy charge and the winter tail block energy charge divided by the winter tail block energy charge. AmerenUE's existing summer/winter tail block differential is calculated as follows: $(\$0.08271 - \$0.03965) \div 0.03965 = 108.6$ percent. This residential rate was approved by the Commission as being just and reasonable in AmerenUE's most recent rate design case, Case No. EO-87-175.

Initially in its application, Union Electric proposed to increase the residential seasonal differential. As part of the Stipulation and Agreement, AmerenUE agreed with all other signatory parties that there should be no change to the seasonal differential and the residential service rate 1(M). The signatory parties also agreed that the winter tail block charge should continue to apply to consumption in excess of 750 kWh per month during the eight billing months of October through May.

Laclede recommends that the Commission change the residential seasonal differential from the present rates to the rates previously ordered by the Commission in Case Nos. EO-85-17 and ER-85-160. Therefore, Laclede bears the burden of proof that the present residential seasonal differential is no longer just and reasonable and that the rates proposed by Laclede are just and reasonable.

In support of its position, Laclede offered testimony from Michael T. Cline, manager of the tariff and rate administration at Laclede Gas Company, and from Neal D. Suess, a consulting engineer with R.W. Beck. Mr. Cline testified that he is recommending a change in the summer/winter tail block differential, which he says should be indicative of the relative energy-related cost of providing residential services to customers in different seasons. Mr. Cline recommended that the residential seasonal differential be reduced from 108.6 to 75 percent because the 75 percent differential was previously approved by the Commission in an order it issued on March 29, 1985, in Case Nos. EO-85-17 and ER-85-160. Mr. Cline also testified that the winter tail block charge should only apply to consumption over 1,000 kWh.

In regard to the 1985 Commission order that Laclede references, Mr. Cline stated in his testimony that he had not read that order in its entirety. Mr. Cline testified that he was aware that the Commission had subsequently issued an order terminating the phase-in of the 75 percent residential seasonal differential by approving a stipulation and agreement submitted by the parties in 1987. Mr. Cline also testified that Laclede had not conducted a study to determine how much of the winter usage by AmerenUE customers was used for space heating. He also testified that he did not believe that a study would be necessary to show that AmerenUE was subsidizing its winter rates by increasing its summer rates, so that AmerenUE can offer a lower winter rate than Laclede. Mr. Cline testified that he believed that the evidence existed to show that a cost basis would support at least a 75 percent differential.

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Laclede argued that AmerenUE subsidized its winter rates by raising the summer rates so that it could decrease the rates in the winter, thereby causing summer customers to subsidize the cost of production in the winter months. Mr. Cline testified that if the rates have appropriately been designed on a cost basis, and rates were tied to cost, that no subsidy would take place. Richard J. Kovach, manager of the rate engineering department at Ameren Services Company, a sister subsidiary of Union Electric Company d/b/a AmerenUE, testified that AmerenUE employed an analysis based on several variations of the average and excess demand allocation methodology in its last rate design case, Case No. EO-87-175, to support the seasonal differential, which allocated 60 percent of its capacity-related cost to the summer peak season and 40 percent of the capacity-related cost to its winter peak season. Laclede's witness, Neal D. Suess, a consulting executive engineer with R.W. Beck, Incorporated, also used the average and excess allocation methodology to calculate the appropriate allocation of demand cost to the summer and winter seasons for the purposes of developing Laclede's proposed residential rate design. Witness Suess testified that his calculations are based upon accepting the unbundled revenue requirement by customer class study that was presented in AmerenUE's rate design testimony sponsored by Wilbon L. Cooper, in Exhibit No. 4.

Mr. Kovach testified that UE was withdrawing its proposal to increase the residential seasonal differential and that they were going to enter into the settlement agreement which proposes that no change be made to the residential seasonal differential rate design in this case. Laclede's witness Mr. Suess testified that he believed that Laclede's calculations were more appropriate than AmerenUE's calculations but did not provide sufficient evidence to convince the Commission to adopt its calculations and proposed residential seasonal differential as just and reasonable.

B. Rider E

Rider E is the section of the AmerenUE tariffs entitled Supplementary Service. Rider E service is provided to customers with a source of electrical generation other than that supplied by the public utility company and the service received from the public utility company is used to supplement or back up the customer's other source of electrical generation. AmerenUE requires all customers who request to enter into a Rider E service relationship to enter into a parallel operating agreement with the company, to install a circuit breaker approved by the company, and to agree that AmerenUE will provide service at a primary voltage level under the provisions of a primary service rate. The cost for Rider E is equivalent to a minimum monthly bill for the Rider E service and the cost will not be less than the bill for actual service or a bill based on the large primary service (LPS) demand charge applied to the customer's contract demand. The customer's contract demand is the kilowatt level initially agreed to by AmerenUE or the actual meter demand delivered to the customer, whichever is greater.

Initially, AmerenUE recommended a change in the proposed billing for the Rider E service to the customer each month. AmerenUE entered into the Stipulation and Agreement in which it agreed that no change should be made to the Rider E supplementary service tariff at this time. The current Rider E supplementary service was found by the Commission to be just and reasonable in its previous order. Therefore, if Laclede were recommending a change, it would bear the burden of proving that the current rate is not just and reasonable and that some other rate is just and reasonable.

Laclede does not propose a change in AmerenUE's Rider E in this case. Laclede claims that AmerenUE's Rider E rate is not cost based and is so cost prohibitive that this rate effectively eliminates all potential for on-site generation. Laclede recommended that the Rider E be redesigned so that it is a reasonable charge but makes no specific recommendation. Laclede requested that the Commission establish a separate case to investigate UE's Rider E but points to no complainant or party who claims that the Rider E supplementary service tariff rate is unreasonably high or has prevented anyone from participating in the co-generation service.

V. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission has reviewed and considered all of the evidence and arguments presented by the various parties and intervenors. Because of the volume of material presented to the Commission, the Commission may not address some evidence and positions on certain issues. The failure of the Commission to mention a piece of evidence or the position of a party indicates that, while the evidence or position was considered, it was not found to be necessary to the resolution of the issue.

A. Residential Seasonal Differential

The Commission finds that Laclede has failed to show that the current Residential Seasonal Differential previously approved by the Commission as just and reasonable is no longer just and reasonable and that the rates proposed by Laclede are just and reasonable. The Commission finds that there should be no change to the seasonal differential in the Residential Service Rate (1M), and that the winter tail-block charge should continue to apply to consumption in excess of 750 kWh per month during the eight billing months of October through May.

B. Rider E

The Commission finds that Laclede has not proposed a change in AmerenUE's Rider E in this case but rather only asked the Commission to institute another case to investigate AmerenUE's Rider E rate structure for supplementary service. The Commission has recently reviewed this issue based upon a complaint of Trigen-St. Louis, an intervenor in this case. Trigen-St. Louis has not renewed its complaint in this case. No other cogeneration user has raised a complaint about AmerenUE's Rider

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E rate in this case. Therefore, the Commission finds no basis for initiating an investigation into Rider E Supplementary Service at this time.

VI. Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

AmerenUE is a public utility engaged in the provision of electric service in the State of Missouri and is subject to the Commission jurisdiction under Chapters 386 and 393 of the Revised Statutes of the State of Missouri 1994 and Cumulative Supplement 1998. The Commission has authority to prohibit implementation of electric service rates that are unjust or unreasonable pursuant to Section 393.130, RSMo (1994).

Orders of the Commission must be based upon competent and substantial evidence on the record. §536.140, RSMo (1994). Based upon its findings of fact, the Commission concludes that the changes proposed by Laclede to the residential seasonal differential rate design are not supported by competent and substantial evidence and shall not be implemented.

The Commission is authorized to examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business. §393.140(5), RSMo (1994). When, in the Commission's opinion, after a hearing on its own motion or upon complaint, the rates or charges of any such person or corporation are unjust, unreasonable, unjustly discriminatory or unduly preferential or in violation of any provision of law, the Commission may prescribe the just and reasonable rates and charges. §393.140(5), RSMo (1994). Laclede requested that the Commission establish a new case to investigate AmerenUE Rider E Supplementary Service rates but failed to state any specific allegation or complaint. The Commission declines to establish a new case on its own motion. Laclede has not stated sufficient information to convince the Commission that an investigation is warranted. In addition, no cogeneration user has raised a complaint about AmerenUE's Rider E rate for supplementary service. The Commission has recently reviewed this issue based upon a complaint of Trigen-St. Louis, an intervenor in this case. Therefore, the Commission finds no basis for initiating a new investigation into Rider E Supplementary Service at this time.

If authorized by law, Laclede may file a complaint separately from this case for the Commission's consideration. §§393.130 and 393.140, RSMo (1994).

IT IS THEREFORE ORDERED:

1. That late-filed Exhibit Nos. 41, 42, and 43 are admitted into the record.
2. That the Stipulation and Agreement filed on May 3, 1999, by Union Electric Company d/b/a AmerenUE, Staff of the Missouri Public Service Commission, the Office of the Public Counsel, UtiliCorp United, Inc., d/b/a Missouri Public Service, Asarco, Inc., The

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Doe Run Company, Trigen-St. Louis Energy Corporation, Retirement Facilities Coalition, Missouri Industrial Energy Consumers, Missouri Retailers Association, and Missouri Energy Group, Attachment A to this order, is approved.

3. That Laclede Gas Company's proposal to change the Residential Seasonal Differential and Winter Tail Block is denied.

4. That Laclede Gas Company's request that the Commission open a new case for the purpose of investigating Rider E Supplementary Service of the tariff of The Union Electric Company d/b/a AmerenUE is denied.

5. That all objections not specifically ruled upon are overruled and all motions not specifically ruled upon are denied.

6. That this order shall become effective on November 30, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Register, Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

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In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996.*

Case No. TO-99-483

Decided November 30, 1999

Evidence, Practice & Procedure § 22. The Commission found good cause existed to allow intervention out of time of Intermedia Communications, Inc., where the company claimed that actions taken by Southwestern Bell Telephone Company since the passing of the intervention deadline made it necessary to participate in order to protect its interests.

Evidence, Practice & Procedure § 6. The Commission rejected a non-unanimous stipulation and agreement which did not provide for settlement of the actual issues in dispute; rather, it provided for an interim measure that would permit a competitive local exchange company (CLEC) to join in the metropolitan calling area (MCA) plan pending the Commission's final decision. The Commission determined that the evidence in the supporting affidavits was not sufficient to support implementation of an expedited interim measure. The Commission also determined that consumer confusion and dissatisfaction may be avoided by maintaining the status quo until the Commission can make its final decision.

Evidence, Practice & Procedure § 8. The Commission rejected a non-unanimous stipulation and agreement without hearing on the stipulation and agreement even though some parties had requested a hearing under the Commission's procedural rules. The Commission found that rule 4 CSR 240-2.115 was intended to be applied when some of the parties had reached an agreement as to the underlying issues of the case. However, the Commission found that in this instance, the signatories of the stipulation and agreement did not agree to resolve any of the issues in the case itself. Instead the signatories to the stipulation and agreement interjected an entirely separate issue of interim relief.

**ORDER REJECTING NON-UNANIMOUS STIPULATION
AND AGREEMENT, GRANTING INTERVENTION,
AND ESTABLISHING PROCEDURAL SCHEDULE**

On May 26, 1999, the Commission established a case for the purpose of investigating certain aspects surrounding the provisioning of metropolitan calling area service which may be affected by the passage and implementation of the Telecommunications Act of 1996. The Commission issued an order directing interested parties to file applications to intervene or to participate without intervention no later than June 25, 1999. An order granting the intervention of several parties was issued on July 12, 1999. On September 7, 1999, the Staff of the Missouri Public Service Commission (Staff) on behalf of the parties filed a status report and proposed procedural schedule.

*The Commission issued an order on May 9, 2000, which denied an application for rehearing in this case.

I NON-UNANIMOUS STIPULATION AND AGREEMENT

On October 8, 1999, AT&T Communications of the Southwest, Inc., and AT&T Wireless Services, Inc. (collectively referred to as AT&T), ALLTEL Missouri, Inc., Grand River Mutual Telephone Company, Sprint Missouri, Inc., Staff, the Office of the Public Counsel (Public Counsel), Gabriel Communications, Inc., and Birch Telecom of Missouri, Inc., filed a Non-Unanimous Stipulation and Agreement (Stipulation). The Stipulation did not provide for settlement of the actual issues in dispute; rather, it provided for an interim measure that would permit a competitive local exchange company (CLEC) to join in the metropolitan calling area (MCA) plan pending the Commission's final decision. Attached to the Stipulation were the Affidavits of R. Matthew Kohly and Barbara A. Meisenheimer.

The Mid-Missouri Group of Local Exchange Company's (MMG) filed a Partial Opposition to Non-Unanimous Stipulation and a Request for Hearing on October 12, 1999. In its pleading, MMG requested that a hearing be held on the issues presented by the Stipulation or, in the alternative, that the Stipulation be rejected or approved subject to certain limitations.

MMG argues that the Commission should not make the MCA service available on an interim basis because the service was not designed for a competitive market. MMG states that the MCA service should only be available after a final Commission decision based upon a hearing. MMG argues that if granted on an interim basis, "[i]t would be difficult and unpopular" to take away the service if at the conclusion of this case the Commission decides it is not in the public interest to maintain MCA service.

Southwestern Bell Telephone Company (SWBT) filed a Request for a Hearing on October 18, 1999. In that pleading, SWBT objected to the Stipulation and requested that the Commission deny the request for interim relief. SWBT argues that the interim relief sought by the signatories to the Stipulation will destroy the revenue neutrality of the original MCA plan. SWBT states that the interim measure would "supersede existing interconnection agreements negotiated under the Act and approved by this Commission, exceed this Commission's jurisdiction to determine retail rates of a carrier without an adjudicatory process and would improperly change the status quo for both customers and carriers, thus making it difficult to reach a different outcome after full hearings."

On November 1, 1999, AT&T filed a Motion for Expedited Hearing. In its motion, AT&T requested the Commission set and hold the hearing regarding the Stipulation on an expedited basis.

The Commission has reviewed the Stipulation, the supporting affidavits, the various objections, and the requests for hearing related to the Stipulation. The Commission's rule 4 CSR 240-2.115 governs nonunanimous stipulations and agreements and states that if a "hearing is requested by one or more of the parties, the commission will grant the hearing and will conduct the hearing in accordance with its rules of procedure." This rule was intended to be applied when some of the parties had reached an agreement as to the underlying issues of the case. In this instance

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the signatories of the Stipulation did not agree to resolve any of the issues in the case itself. Instead the signatories to the Stipulation have interjected an entirely separate, although no less complex, issue of interim relief.

The transition from a monopolistic environment to a competitive environment is not simple. Thus, the Commission is hearing this case to determine how MCA service will make the transition into competition. In their supporting documents the signatories state that the present status of the MCA plan “implementation is, at best, customer confusion and uncertainty and, at worst, complete deprivation of participation in the MCA calling plan and a breakdown of the calling plan mandated by the Commission.” Even with this alleged confusion, the signatories request that the Commission, on an expedited basis, change the implementation of the MCA plan in the interim based on limited amounts of evidence supplied by less than all of the parties to this case. The Commission determines that implementing an interim measure for a period of a few months will only lead to additional consumer confusion and dissatisfaction if the final decision of the Commission varies from the interim plan.

The signatories to the Stipulation allege that it is in the public interest for the Commission to change the status quo by ordering this interim measure. However, the Commission determines that the evidence provided in the Affidavits is not sufficient to support approval of the Stipulation and an order implementing the terms of the Stipulation. The Commission determines that it is better to maintain the status quo until a decision regarding the MCA service in its entirety can be made.

Because the Commission is rejecting the Stipulation, the requests for an expedited hearing are moot.

II. SUBCOMMITTEEREPORT

On October 8, 1999, the Staff filed a Subcommittee Report and requested that the Commission accept the report. The Subcommittee Report was filed “on behalf of all parties” by the Staff; however, Staff also states that it is “not a stipulation and may be amended by any party.” The Subcommittee Report states that “[t]he purpose of this report is to review the MCA plan ordered by the Commission in Case No. TO-92-306 and to convey how calling within the metropolitan calling area (MCA) is currently being accomplished and what forms of inter-company compensation arrangements are currently in place.”

The Commission has reviewed the Subcommittee Report submitted by Staff. It is unclear, from the Subcommittee Report itself, what purpose would be served by the Commission “accepting” this report since Staff indicates it is not a stipulation of fact. Therefore, the Commission will not rule on Staff’s Motion to File Subcommittee Report until it has had a chance to receive clarification by the parties at a prehearing conference as set below.

III. PROCEDURALSCHEDULE

The Commission has reviewed the proposed procedural schedule filed by the parties. As part of the proposed procedural schedule, the parties recommend that

a series of local public hearings be held. The Commission finds that local public hearings should be held in areas where customers may be affected by the Commission's decision. Therefore, the Commission will set the local public hearings (two in the St. Louis area, two in the Kansas City area, and one in the Springfield area) in the months of March and April 2000. The Commission will issue a separate order scheduling the specific times and places for those hearings as soon as the accommodations can be scheduled. The parties may submit suggestions as to times and locations that might best accommodate the general public no later than December 10, 1999.

The parties proposed a procedural schedule for the Commission to consider. The Commission determines that that proposed schedule will not allow sufficient time for public hearings and will instead set the procedural schedule as ordered below. The Commission also finds that the following conditions should be applied to the schedule:

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) The parties shall agree upon and the Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing and the order in which they shall be called, and the order of cross-examination for each witness. Any issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.

(C) The position statement shall be filed in paper form with the Commission's Records Department according to the Commission's rules, and a copy shall also be submitted electronically, either on computer disk or by e-mail to the Regulatory Law Judge. Electronically-submitted documents should be in Word, WordPerfect, or ASCII format. The Regulatory Law Judge's e-mail address is: ndippell@mail.state.mo.us.

(D) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the Regulatory Law Judge at least five days prior to the date of the hearing.

(E) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and shall set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(F) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has

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not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the Regulatory Law Judge, and all counsel.

IV. INTERVENTION

On November 5, 1999, Intermedia Communications, Inc. (Intermedia), filed an application to intervene out of time and a request for expedited hearing. Intermedia states that it is a certificated provider of basic local telecommunications services in Missouri. Intermedia states that its interests are different from those of the general public and that no other party can adequately represent its interests. Intermedia indicates that good cause exists for it to intervene out of time because of actions taken by SWBT in September and October 1999. Intermedia states that it is now necessary for it to participate in this case in order to protect its interests and those of its customers that could be adversely affected by the Commission's decision. Intermedia states that its intervention will not unduly burden the other parties to this proceeding. There were no objections to Intermedia's intervention.

The Commission has reviewed the application for intervention filed by Intermedia and finds that good cause exists to allow Intermedia to intervene out of time. The Commission determines that the application is in substantial compliance with Commission rules regarding intervention and that the applicant has an interest in this matter that is different from the interests of the general public. The Commission concludes that the request for intervention of Intermedia should be granted.

IT IS THEREFORE ORDERED:

1. That the application for intervention out of time of Intermedia Communications, Inc., is granted.

2. That the Non-Unanimous Stipulation and Agreement submitted by AT&T Communications of the Southwest, Inc., AT&T Wireless Services, Inc., ALLTEL Missouri, Inc., Grand River Mutual Telephone Company, Sprint Missouri, Inc., the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, Gabriel Communications, Inc., and Birch Telecom of Missouri, Inc., is rejected.

3. That the following procedural schedule is adopted:

January 6, 2000	—	Prehearing Conference 9:30a.m.
February 1, 2000	—	Direct Testimony due 3:00p.m.
March 1, 2000	—	Rebuttal Testimony due 3:00p.m.

March 28, 2000	—	Surrebuttal Testimony (all parties) 3:00p.m.
April 11, 2000	—	List of Issues due
April 25, 2000	—	Statement of Positions due
May 15-19, 2000	—	Evidentiary Hearing 9:00 a.m. (First Day)

4. That anyone wishing to attend the prehearing conference or the hearing who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference or the hearing at one of the following numbers: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

5. That this order shall become effective on December 10, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.
Dippell, Senior Regulatory Law Judge

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**Director of the Department of Manufactured Homes, and Modular
Units of the Public Service Commission, Complainant, v. Pitts
Mobile Homes, Respondent.**

Case No. MC-2000-181
Decided December 7, 1999

Manufactured Housing §§16, 19. The Commission issued an order of default and suspended a manufactured housing dealer's certificate of dealer registration when the dealer failed to respond to Commission's Notice of Complaint regarding a complaint against the dealer.

ORDER OF DEFAULT

The Director of the Department of Manufactured Homes and Modular Units of the Public Service Commission (Director) filed a formal complaint with the Missouri Public Service Commission on August 24, 1999 against Pitts Mobile Homes. The Director alleges, in seven counts, that Pitts Mobile Homes failed to properly comply with the setup procedures for a manufactured home and failed to correct the setup deficiencies within a reasonable amount of time as specified by the Director, as required by Section 700.100.3(6), RSMo 1994.

On August 31, 1999, the Commission issued a Notice of Complaint to William Pitts, d/b/a Pitts Mobile Homes requiring Pitts Mobile Homes to answer within 30 days from the date of the notice (September 30, 1999). The Commission's official files do not indicate that the August 31st notice was sent by certified mail. Therefore, a second Notice of Complaint was issued on October 7, requiring Pitts Mobile Homes to answer within 30 days from the date of the notice (November 7). The Commission's official file indicates that the notice was delivered on November 4. Pitts Mobile Homes has not filed an answer. On November 19, the Director filed a Motion for Default. Pitts Mobile Homes has not responded to the Director's motion.

Pursuant to 4 CSR 240-2.070(9) if the respondent in a complaint case fails to file an answer within the time period allowed, the respondent is in default and the allegations of the complaint are deemed admitted by the respondent. The Commission finds that Pitts Mobile Homes is in default and the allegations in the complaint are deemed admitted by Pitts Mobile Homes.

IT IS THEREFORE ORDERED:

1. That Pitts Mobile Homes is in default and that all allegations set forth in all counts of the complaint are deemed admitted.
2. That the relief sought by the Director in his complaint is granted.
3. That the Certificate of Dealer Registration No. 890001, issued to Pitts Mobile Homes on January 13, 1999, is suspended for 14 days on each of the seven counts set forth in the Director's Complaint. The certificate will therefore be suspended for a total of 98 days.

4. That the Office of General Counsel is authorized to seek civil penalties from Pitts Mobile Homes pursuant to Section 700.115.2, RSMo 1994.

5. That this order shall become effective on December 17, 1999.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Woodruff, Regulatory Law Judge

In the Matter of the Application of The Empire District Electric Company for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain an Electric Transmission and Distribution System to Provide Electric Service in an Area in Greene County, Missouri.

Case No. EA-99-172
Decided December 7, 1999

Evidence, Practice and Procedure §8. Where some parties filed a stipulation and agreement but that stipulation and agreement was opposed by one of the parties, the Commission considered the non-unanimous stipulation and agreement to be merely a change of position by the signatory parties from their original positions, to the stipulated position.

Evidence, Practice and Procedure §8. Electric §3. The submission of a non-unanimous stipulation and agreement did not change the applicant's obligation to meet the requirements imposed by statute and regulation to qualify for the certificate of convenience and necessity that it sought.

Electric §3. Section 393.170.3, RSMo 1994, authorizes the Commission to grant a utility the authority to operate an electric system in a given geographical area if it shall "after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service."

Electric §3. When considering the granting of a certificate of convenience and necessity, the term "necessity" does not mean "essential" or "absolutely indispensable" but that an additional service would be an improvement justifying its cost.

Electric §3. In making a determination as to whether or not a certificate of convenience and necessity should be granted, the Commission has considered the following standards:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.

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Electric §3. 4 CSR 240-2.060(2)(F) does not require the applicant for an expansion of its service area to resubmit a feasibility study after submission of a non-unanimous stipulation and agreement that substantially reduced the service area for which it sought a certificate of convenience and necessity.

Electric §3. The Commission approved an electric utility's application to expand its service area in Greene County, Missouri.

APPEARANCES

Gary W. Duffy, Attorney at Law, Brydon, Swearngen & England, P.C., P.O. Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102-0456, for The Empire District Electric Company.

Jeffrey A. Keevil, Attorney at Law, Stewart & Keevil, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for City of Springfield, Missouri, through the Board of Public Utilities.

Rodric A. Widger, Attorney at Law, Andereck, Evans, Milne, Peace and Baumhoer, P.O. Box 4929, 1111 S. Glenstone, Springfield, Missouri 65808, for Southwest Electric Cooperative, Ozark Electric Cooperative and Webster Electric Cooperative.

John B. Coffman, Deputy Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for Office of the Public Counsel and the Public.

David J. Stueven, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

The Empire District Electric Company (Empire) applied to the Commission on October 20, 1998, for a certificate of public convenience and necessity authorizing it to construct, install, own, operate, control, manage and maintain an electric transmission and distribution system to provide electric service in portions of Greene County, Missouri. Empire is a Kansas corporation and is qualified to do business as a foreign corporation in Missouri. Empire's principal office is located at 602 Joplin Street, Joplin, Missouri 64802.

Empire is currently authorized to provide electric service in portions of Greene County, Missouri. Its application requests authority to expand its service area in Greene County to include specified areas in and around the cities of Republic, Willard and Strafford. In addition, the application seeks authority to serve an area near the Christian/Greene County line.

The Commission issued an Order and Notice on October 23, 1998. That order provided notice of Empire's application to the public and indicated that any interested person wishing to intervene was to file an application with the Commission on or before November 23, 1998. On November 16, 1998, Southwest Electric

Cooperative, Ozark Electric Cooperative and Webster Electric Cooperative (collectively known as the Cooperatives) filed a joint application to intervene. The City of Springfield, Missouri, through the Board of Public Utilities (City Utilities) filed its application to intervene on November 19, 1998. No other party requested permission to intervene. On December 3, 1998, the Commission issued an order granting the Cooperatives' and City Utilities' requests to intervene. The Commission established a procedural schedule by its order issued on January 13, 1999, and set August 2 and 3, 1999, as the dates for a hearing. On June 25, 1999, Empire, the Staff of the Public Service Commission (Staff) and the Cooperatives filed a Non-Unanimous Stipulation and Agreement (Agreement). City Utilities and the Office of the Public Counsel (Public Counsel) did not join in the Agreement. On June 29, 1999, City Utilities filed a Request for Hearing and for Extension of Time to File Cross-Surrebuttal. City Utilities' motion indicated its opposition to the Agreement and requested additional time to prepare cross-surrebuttal in order to respond to the Agreement. On June 30, 1999, the Commission issued an Order Modifying Procedural Schedule that allowed the parties one additional week in which to file cross-surrebuttal testimony.

On July 15, 1999, the Staff, on behalf of all of the parties, filed a proposed list of issues. Each of the parties filed a statement of its respective positions regarding those issues on July 22, 1999. The matter proceeded to a hearing on the merits on August 2, 1999. Public Counsel appeared at the hearing and announced that it supported the Agreement. Testimony supporting and opposing Empire's application was admitted into evidence. The parties submitted initial briefs on September 15, 1999 and reply briefs on October 5, 1999.

At the hearing, the Commission had questions concerning the rates charged by the various utilities involved in this case. At the request of the Commission, on August 18, 1999, Staff submitted late-filed Exhibit No. 8, consisting of three pages entitled Residential Bill Comparison, Small Non-Residential Bill Comparison – Single-Phase Service, and Medium Non-Residential Bill Comparison – Three-Phase Service. On August 20, 1999, the Commission issued a Notice Regarding Late Filed Exhibit, which notified any party wishing to make an objection to the late-filed exhibit that it must do so no later than August 30. The notice also indicated that if no objections were filed, the late-filed exhibit would be admitted into evidence. No party filed any objections to late-filed Exhibit No. 8 and it will therefore be admitted into evidence.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

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The Non-Unanimous Stipulation and Agreement:

In the Agreement, Empire agreed to seek certification in a substantially smaller geographic area. In return, Staff and the Cooperatives agreed not to oppose Empire's certification to serve those more limited areas. Under terms of the Agreement, Empire is seeking certification in and around the cities of Willard, Republic and Strafford. The precise areas for which certification is sought are described in Appendix A to the Agreement.

City Utilities did not join in the stipulation and agreement and indeed strenuously opposed its provisions. Therefore, the Commission will consider the non-unanimous stipulation and agreement to be merely a change of position by the signatory parties from their original positions to the stipulated position. See. In the Matter of Missouri Public Service, 2 MPSC 3rd 221, 223 (1993). In this case, the effect of the Agreement is to amend Empire's application to change the areas in which it is seeking certification. The Agreement does not change Empire's obligation to meet the requirements imposed by statute and regulation to qualify for the certificates of convenience and necessity that it seeks.

The Commission need not, and will not, "approve" or "disapprove" the Agreement. In that regard, some of the parties have suggested that Empire and the other signatories to the Agreement have an obligation to present evidence to "support" the Agreement. In the context of this case, that suggestion is misleading. Section 393.170.3, RSMo 1994, provides that the Commission may grant a certificate of convenience and necessity if, after due hearing, it determines that "such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service." If the Commission finds that the requirements of law have been satisfied, it will grant the requested certificates of convenience and necessity. If those requirements have not been met, then no certificates will be granted, no matter what some of the parties may have agreed upon in the non-unanimous stipulation and agreement.

Requirements for Certification:

Section 393.170.3, RSMo 1994, gives the Commission the authority to grant a utility the authority to operate an electric system in a given geographical area if it shall "after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service." The statute does not define "necessary or convenient", but that requirement has been refined when examined by the courts. The term "necessity" does not mean "essential" or "absolutely indispensable" but that an additional service would be an improvement justifying its cost. State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d 216, 219 (Mo. App. 1973). The state's primary interest in determining whether to grant a certificate is to protect the public rather than to protect a utility from competition. State ex rel. Public Water Supply Dist. No. 8 v. Public Service Commission, 600 S.W.2d 147, 155 (Mo. App. 1980).

In making a determination as to whether or not the statute has been satisfied and a certificate of convenience and necessity should be granted, the Commission has in prior cases considered the following standards:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.

In re. Ozark Natural Gas Company, 5 Mo. P.S.C. 3rd 143, 146 (1996). See also, In re. Tartan Energy Company, 3 Mo. P.S.C. 3rd 173, 177 (1994); In re. Intercon Gas, Inc., 30 Mo. P.S.C. (N.S.) 554, 561 (1991). Those five standards will be applied to each distinct area for which Empire seeks certification.

Consideration of the Standards:

Empire's application, as amended by the non-unanimous stipulation and agreement, requests that it be certificated to provide electric services in specified areas in and around the communities of Republic, Willard and Strafford. With regard to the areas in and around Republic, no party opposed Empire's request for certification. With regard to the cities of Willard and Strafford, no party opposed Empire's request for certification in the areas now within the city limits of those communities. However, City Utilities did oppose Empire's request to be certificated in areas outside the current city limits. Therefore, Empire's Application will be separately considered for each of three areas: First, the area near Strafford but outside the existing city limits; Second, the area near Willard but outside the existing city limits; and Third, all other areas for which Empire seeks to be certificated.

1. There must be a need for the service

a. The area near Strafford but outside the existing city limits.

The evidence presented at the hearing indicates that Empire is currently the franchised supplier of electricity within the community of Strafford. Testimony also indicated that Strafford is expanding and that it has in the past, and may in the future, expand its city limits into areas for which Empire is not certificated to provide service. The future expansion of Strafford may create problems for Empire in that there could once again be areas of the city that it would not be certificated to serve. Empire requests that it be allowed to create a reasonable buffer zone around the city so that as Stafford expands into new areas, it will not be necessary to continually come back to the Commission to request piecemeal expansions of its service territory.

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The future expansion of Strafford's city limits might create an additional problem if Empire's service area is not allowed to keep ahead of the expansion of the city. Strafford's population is expected to exceed 1,500 in the 2000 census. That means that Strafford will no longer be considered a rural area for purposes of section 394.080, RSMo 1994, the statutes that permits rural electric cooperatives to serve customers only in rural areas. Therefore, the electric cooperative that serves the area around Strafford would not be able to serve new customers in the areas annexed by Strafford. Similarly, City Utilities' ability to serve new customers in areas annexed by Strafford would be limited by City Utilities' lack of a franchise from Strafford. Thus, the possibility exists that a customer located within a newly annexed area of Strafford, but outside the area within which Empire is certificated to serve, could not be lawfully served by any electric provider. Such a customer might be inconvenienced while Empire came before the Commission to seek an expansion of its service territory. For that reason it is reasonable and appropriate to allow Empire its requested buffer area around the current city limits of Strafford.

City Utilities argues that the requested expansion of Empire's service area is not needed because to allow Empire to expand into the area in question would create an inappropriate duplication of services. City Utilities and Southwest Electric Cooperative already have facilities within the area and City Utilities suggests that to permit Empire to also enter this area would create an unsightly and perhaps hazardous tangle of electric lines. The Commission certainly agrees that unnecessary duplication of facilities should be avoided. The Commission also believes that the safety of the public must always be considered when deciding whether or not to issue a certificate of service authority. However, some duplication of facilities already exists in this area. Allowing Empire to add additional facilities will not create any new or unique problems. On balance, the potential problems resulting from any additional duplication of facilities that might result from granting Empire its requested expansion of service territory are outweighed by the demonstrated need for that expansion. The Commission finds that there is a need for Empire's services in an expanded service area near Strafford but outside the city limits.

b. The area near Willard but outside the existing city limits

Essentially the same arguments for and against granting Empire's request to expand its service area near Strafford also apply to its request to expand its service area near Willard. Again, only Empire holds a franchise from the municipality to serve its citizens. Therefore, there is the same need for Empire to be certificated to serve areas that may be incorporated within the city limits in the future. Furthermore, the risk of duplication of facilities in the area around Willard is reduced because City Utilities does not currently have any facilities in the area for which Empire seeks certification. The Commission finds that there is a need for Empire's services in an expanded service area near Willard but outside the city limits.

c. All other areas for which Empire seeks to be certificated.

No party opposed Empire's request for certification in the other areas specified in the stipulation and agreement. The evidence that was persuasive with regard to the areas around Strafford and Willard is equally persuasive with regard to the other areas. Indeed, for those areas that have already been incorporated into the municipal limits of Strafford, Willard and Republic, the need for Empire's certification is particularly evident. The Commission finds that there is a need for Empire's services in an expanded service area in all other areas specifically described in the stipulation and agreement.

2. The Applicant must be Qualified.

The area near Strafford but outside the existing city limits, the area near Willard but outside the existing city limits, and all other areas for which Empire seeks to be certificated.

Empire's qualification to manage and operate an electric system in the requested areas was unchallenged at the hearing. Empire has operated as an electric utility since 1909 and currently serves an area of approximately 10,000 square miles in Missouri, Kansas, Arkansas and Oklahoma. Empire's qualifications to expand its existing services into the relatively small additional areas for which it seeks certification are apparent. The Commission finds that Empire is qualified to provide the services for which it seeks certification.

3. The applicant must have the financial ability to provide the service.

The area near Strafford but outside the existing city limits, the area near Willard but outside the existing city limits, and all other areas for which Empire seeks to be certificated.

Empire's financial ability to provide the services for which it seeks certification were not challenged by any party. Empire is a well-established utility company and the evidence indicated that it would have no difficulty in financing its proposed expansion into the additional areas for which it seeks certification. The Commission finds that Empire has the financial ability to provide the services for which it seeks certification.

4. The applicant's proposal must be economically feasible.

The area near Strafford but outside the existing city limits, the area near Willard but outside the existing city limits, and all other areas for which Empire seeks to be certificated.

Before the Commission will grant a certificate of service authority to a utility, it must be shown that the utility's proposed service will be economically feasible. Empire did provide credible evidence regarding the construction costs and revenue expectations associated with the proposed expansion. City Utilities asserted that Empire's financial estimates were speculative and therefore, unreliable. City Utilities

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also pointed out that the financial estimates Empire set out in its original application did not change when it agreed to seek a greatly reduced area in the non-unanimous stipulation and agreement. City Utilities suggests that this is further indication that the financial estimates are unreliable.

Michael Palmer, Empire's witness, testified at the hearing that these financial estimates are indeed speculative. He asserted that any estimates must be speculative at this point because Empire does not currently have any customers in the areas for which it is seeking certification. He indicated that Empire would expand into newly certificated areas in a manner that was consistent with the tariffs it has filed with the Commission. Palmer also testified that the reduction of the area for which Empire was seeking certification would not significantly change Empire's financial estimates.

Empire presented a reasonable estimate of its construction costs and anticipated revenue and those estimates were not rebutted by any contrary evidence. Furthermore, it is important to keep in mind the Commission's purpose in requiring a showing of financial feasibility. A utility's customers and the public could be harmed if the utility jumped into a project that would be a financial drain on the company. In determining whether there is a financial risk, it is appropriate to examine the overall financial strength and stability of the company. See *In the Matter of the Application of UtiliCorp United, Inc.*, 3 Mo. P.S.C. 3d 127 (1994). In this case, Empire's possible expansion is a very small project for a rather large utility. Indeed, Empire estimated that costs for new construction in its expanded service area would be four-tenths of one percent of Empire's total budgeted and anticipated construction expenditures for the same time period. Clearly, the financial health and stability of Empire will not be put at risk by this project. Under these circumstances, the Commission finds that Empire has demonstrated that its proposed expansion is financially feasible.

5. The service must promote the public interest.

The area near Stafford but outside the existing city limits, the area near Willard but outside the existing city limits, and all other areas for which Empire seeks to be certificated.

Generally, a finding that a proposed service will promote the public interest will follow from a finding that the first four standards have been satisfied. In *The Matter of the Application of Tartan Energy Company*, 3 Mo. P.S.C. 3d 173, 189 (1994). That is true in this case. Empire has successfully demonstrated the need for an expanded service area and it has demonstrated that it is qualified to serve the area and has the financial ability to do so. Finally it has established that it is financially feasible for it to provide services in the expanded area. The Commission finds that granting Empire's request for an expanded service area will promote the public interest.

The Requirements of 4 CSR 240-2.060(2)(F):

City Utilities asserts that the Commission should reject Empire's application because Empire has allegedly failed to comply with the requirements of 4 CSR 240-2.060(2)(F). That regulation requires that an application for certificate of service

authority must contain, among other requirements, a list of ten persons residing in the area to be served, and a feasibility study containing plans and specifications and estimated costs, plans of financing, proposed rates and charges and estimates of numbers of customers, revenues and expenses. Empire's original application contained all the required information. However, Empire did not present a revised list of residents or a revised feasibility study following the filing of the non-unanimous stipulation and agreement. Therefore, City Utilities suggests that the Commission is precluded by its own rule from granting Empire the disputed new territory. City Utilities misunderstands the requirements of the Commission's regulation.

4 CSR 240-2.060(2)(F) requires that certain information be included in any application for a certificate of convenience and necessity for a service area. This requirement is in place so that the Commission's Staff and other potentially interested entities will be able to effectively examine and evaluate the application. There is nothing in the regulation that would require an applicant to resubmit the required information when it enters into a stipulation and agreement. Empire is, of course required to produce evidence to satisfy the Commission's requirements for certification. As previously indicated, Empire has done so. Any failure to update its application will not prevent the Commission from granting Empire's application.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

1. The Empire District Electric Company is duly incorporated under the laws of the state of Kansas and is qualified to do business as a foreign corporation in Missouri.

2. The Empire District Electric Company is subject to the jurisdiction of the Public Service Commission as provided by Section 386.250, RSMo Supp. 1998, and Chapter 393, RSMo.

3. Section 393.170.1, RSMo 1994, provides in relevant part that "No...electrical corporation,...shall begin construction of a...electric plant...without first having obtained the permission and approval of the commission".

4. Section 393.170.2, RSMo 1994, provides in relevant part that "The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service."

Based upon the Commission's review of the applicable law, Empire's Application as modified by the non-unanimous stipulation and agreement, and its findings of fact, the Commission concludes that Empire's Application should be granted.

IT IS THEREFORE ORDERED:

1. That The Empire District Electric Company's Application, as modified by the Non-unanimous Stipulation and Agreement filed on June 25, 1999, is approved.

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2. That The Empire District Electric Company is granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage, and maintain a system for the provision of electric service to the public pursuant to its approved rates, rules and regulations in the areas of Greene County, Missouri, as described in Appendix A to the non-unanimous stipulation filed on June 25, 1999. A copy of Appendix A is attached to this Report and Order.

3. That late-filed Exhibit No. 8 is admitted into evidence.
4. That any motions not previously ruled upon are hereby denied.
5. That this Report and Order shall become effective on December 17, 1999.

Lumpe, Ch., Crumpton, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Murray, C., dissents with opinion

Editor's Note: The Non-Unanimous Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I respectfully dissent. I would grant Empire District Electric Company authority to serve the additional area it requests in and around Republic, as well as the additional areas it requests within the current city limits of Willard and Strafford. Based upon the evidence, I would not at this time grant authority to serve the additional areas outside the city limits of Willard and Strafford.

In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules.*

Case No. GR-99-315
Decided December 14, 1999

Gas §18. The Commission rejected the tariff sheets filed by Laclede Gas Company which were designed to produce an annual increase of approximately 6.1 percent (\$30.5 million) in charges for gas service.

Gas §20. The Commission found it was reasonable to use the discounted cash flow (DCF) analysis in determining the return on equity of Laclede Gas Company. The Commission also determined that a return on equity of 10.5 percent is a just and reasonable return.

Gas §24. The Commission found that Laclede Gas Company's recommendation of a \$29 million short-term debt balance was not reasonable or consistent with the evidence presented that the short-term debt was increasing. The Commission found that a 42-month period was representative of the actual trend toward increased short-term debt experienced by the company.

Gas §19. The Commission found that Laclede Gas Company's actual customer data for the test year was more complete than the data used in the Staff of the Missouri Public Service Commission's calculations. Therefore, the Commission found that a revenue collection lag of 34.8 days was just and reasonable and should be used to determine the company's revenue requirement.

Gas §29, Evidence, Practice & Procedure §6. The Commission found that a proposed cap on advertising expenses was not supported by competent and substantial evidence and that in order to fulfill its duty of determining if the company's expenses on advertising were prudent, the Commission must do a review of the advertising expenses. The Commission reaffirmed that it will continue to follow the standards as set out in *Re: Kansas City Power and Light Company*, 28 Mo. P.S.C. (N.S.) 228 (1986).

Gas §24. The Commission found a three-year expiration with periodic reporting to the Staff of the Missouri Public Service Commission and the Office of the Public Counsel is a reasonable time limit on an accounting authority order. Therefore, the Commission ordered that the accounting authority order would expire at the end of the three year period and will only be extended by the filing of a new ratemaking proceeding with the Commission.

Depreciation §§12, 22, 32, Gas §27. The Commission found that Laclede Gas Company failed to show that its depreciation calculation, with regard to net salvage was just and reasonable. The Commission determined that Staff's net salvage calculation would allow the company to recover the amounts it is currently spending for net salvage without over-recovering from its ratepayers is a just and reasonable result.

*This order contains corrections approved by the Commission in an order issued on December 16, 1999. The Commission, in an order issued on April 13, 2000, denied rehearing in this case.

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Depreciation § 32, Gas § 29. The Commission found that Laclede Gas Company had not committed to removing its natural gas holders, that the company had already recovered its capital investment in the natural gas holders, and that there was no interim net salvage value of the natural gas holders. Therefore, the Commission determined that it was not just and reasonable for current customers of the company to pay for the expense of removal when the ratepayers may receive no benefit from those payments.

Gas § 20, Rates §§40, 108. The Commission found that Laclede Gas Company's most recent projection of its off-system sales revenue was supported by the current trend in decreasing off-system sales revenues and therefore, the Commission imputed \$.9 million of off-system sales revenue to the company's revenue requirement.

APPEARANCES

Gerald T. McNeive, Jr., Senior Vice President-Finance and General Counsel, *Michael C. Pendergast*, Associate General Counsel, *Thomas M. Byrne*, Associate Counsel, and *Ellen L. Theroff*, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Ronald K. Evans, Managing Associate General Counsel, and *Susan B. Knowles*, Attorney, Ameren Services Company, One Ameren Plaza, 1901 Chouteau Avenue, Post Office Box 66149 (MC1310), St. Louis, Missouri 63166, for Union Electric Company, d/b/a AmerenUE.

Diana M. Schmidt, Bryan Cave LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102, for Adam's Mark Hotels, Alcoa Foil Products (Alumax, Inc.), Anheuser-Busch Cos., Inc., The Boeing Company, Ford Motor Company, General Motors Corporation, Hussmann Refrigeration, MEMC Electronic Materials, Inc., Monsanto Company, Paulo Products Company, Procter & Gamble Manufacturing Company, and Ralston Purina Company (the "Missouri Industrial Energy Consumers").

Robert C. Johnson, Attorney at Law, 720 Olive Street, Suite 2400, St. Louis, Missouri 63102, for Barnes-Jewish Hospital, DaimlerChrysler Corporation, Emerson Electric Company, and SSM HealthCare (the "Missouri Energy Group").

John D. Landwehr, Cook, Vetter, Doerhoff & Landwehr, P.C., 231 Madison Street, Jefferson City, Missouri 65101, for MRT Energy Marketing Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Thomas R. Schwarz, Jr., Deputy General Counsel, *Marc D. Poston*, Senior Counsel, *Cliff E. Snodgrass*, Senior Counsel, *David J. Stueven*, Assistant General Counsel, and *Nathan Williams*, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Nancy Dippell, Senior Regulatory Law Judge.

REPORT AND ORDER

Procedural History

Laclede Gas Company submitted revised tariff sheets reflecting increased rates for gas service provided to customers in its Missouri service area on January 26, 1999. The revised tariff sheets were assigned Tariff No. 9900539. The proposed effective date on the tariff sheets was February 26, 1999. The revised tariff sheets were designed to produce an annual increase of approximately 6.1 percent (\$30.5 million) in charges for gas service.

The Commission issued an order on February 9, 1999, suspending the proposed tariff sheets until December 26, 1999. In that order the Commission also established a deadline for interventions and established a procedural schedule. On April 29, 1999, the Commission issued an order granting the applications to intervene filed by Union Electric Company, d/b/a AmerenUE (AmerenUE), the Missouri Industrial Energy Consumers,¹ MRT Energy Marketing Company, the Oil, Chemical & Atomic Workers, Local 5-6, and the Missouri Energy Group.²

A recommendation was filed by Laclede on March 11, 1999, concerning the test year. Laclede also requested a true-up audit and hearing and filed its direct testimony. AmerenUE, Public Counsel and Staff all filed responses or recommendations regarding the test year.

On April 29, 1999, the Commission issued an Order which established the test year as the twelve months ending on December 31, 1998, updated for known and measurable changes through March 31, 1999.

A prehearing conference was held on July 9, 1999. The Commission solicited comments from the general public via public hearings in the City of St. Louis and St. Louis County, Missouri, on August 11, 1999. An evidentiary hearing was held beginning August 30, 1999. On September 1, 1999, a Partial Stipulation and Agreement was filed by Staff, Laclede, AmerenUE, MIEC, the Missouri Energy Group, and Public Counsel. On September 3, 1999, the same parties filed a First Amended Partial Stipulation and Agreement (Stipulation). On September 13, 1999, Laclede filed additional information as provided in paragraph 12 of the Stipulation.

An Order Establishing True-Up Audit and Hearing was issued on September 12, 1999, setting the true-up audit through August 31, 1999, and setting the hearing date. A True-Up Hearing was held on October 7, 1999. Initial Briefs were submitted on October 15, 1999, and Reply Briefs were submitted on November 1, 1999.

¹The Missouri Industrial Energy Consumers is comprised of the Adam's Mark Hotels, Alcoa Foil Products, Anheuser-Busch Companies, Inc., The Boeing Company, Ford Motor Company, General Motors Corporation, Hussmann Refrigeration, MEMC Electronic Materials, Inc., Monsanto Company, Paulo Products Company, Procter & Gamble Manufacturing Company, and Ralston Purina Company.

² The Missouri Energy Group consists of Barnes-Jewish Hospital, DaimlerChrysler Corporation, Emerson Electric Company, and SSM Healthcare.

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During deliberations, the Commission ordered that Staff, Public Counsel, and Laclede submit responses to six revenue requirement scenarios. The Commission also indicated that other parties would be allowed to file responses to the scenarios. Scenario responses were received from Staff and Laclede Gas Company on December 10, 1999. In addition, Staff indicated that Public Counsel concurred with Staff's scenario calculations.

Pending Motions and Exhibits

At the hearing, Exhibits 113 (Information on Residential Customer Usage), 114HC (Studies Regarding the Efficiency of Homes Customers are Moving Into), 115 (Values of Stock in the Last 12 to 24 Months), and 117 (Return on Equity of Other Missouri Gas Companies) were requested by the Commission and submitted by the various parties.

Exhibit 125HC was reserved at the hearing at the request of the parties for relevant portions of the record from the Commission's Case No. GT-99-303. That exhibit was received by the Regulatory Law Judge on September 17, 1999. A Notice of Briefing Schedule and Response Time was issued on September 15, 1999, which instructed the parties that responses to Exhibits 113, 114HC, 115, and 117, and objections of Staff to Exhibit 116, were to be filed no later than September 17, 1999. That notice also stated that responses to Exhibit 125HC were due by September 17, 1999. A later notice was issued allowing the parties until October 1, 1999, to file responses to Exhibit 125HC.

A response to Exhibit 117 was filed by Laclede. In its response, Laclede states that it does not object to the Exhibit 117 per se, but it does not believe the information to be factually or conceptually accurate. No other responses or objections were filed related to those exhibits.

Exhibit 116 (Deposition of David Broadwater) was received at the hearing subject to written objections to be made by the Staff. Objections were filed on September 1, 1999, and a response by Laclede was filed on September 30, 1999. An Order Regarding Objections to Exhibit 116 was issued on October 12, 1999, which sustained some of Staff's objections and struck from the record portions of that exhibit. The order also overruled some of Staff's objections.

On November 12, 1999, Laclede filed a Motion to Strike and Request to Take Administrative Notice. Laclede moved to strike portions of Public Counsel's Reply Brief at pages 4 and 7 which referred to the Commission's Report and Order in Case No. GR-96-193 as published at Re: Laclede Gas Company, 172 P.U.R.4th 83, 88 (1996). Laclede objects to these portions of Public Counsel's Reply Brief because "the cited language . . . in Case No. GR-96-193 was rendered by the parties as part of a Stipulation and Agreement." Laclede argued that it is not consistent with the parties' agreement in GR-96-193 to make this argument. In the alternative, Laclede argued that the references support its position on the return on equity and short-term debt issues.

Laclede also stated in its motion that Staff and Public Counsel argued for the first time in their Reply Briefs “that Laclede’s proposed off-system sales revenue amount of \$900,000 should be rejected because it is based on an estimate for the 1998-1999 timeframe.” Laclede requested that the Commission take administrative notice of Laclede’s November 4, 1999, GSIP Monitoring Report filed in its PGA case.

On November 18, 1999, Public Counsel filed a response to Laclede’s motion and Staff filed Suggestions in Opposition of Laclede Gas Company’s Motion to Strike and Request to Take Administrative Notice. Public Counsel argued that the citations to GR-96-193 in its Reply Brief should not be stricken because they are properly used to rebut claims made by Laclede that Public Counsel’s recommendations in this case are not consistent with past actions of the Commission. Public Counsel also argued that “[t]here is nothing inappropriate about pointing out” that Laclede’s claims are an estimate. The Staff made similar arguments. The Commission agrees with Public Counsel and Staff that the \$900,000 is an estimate of the off-system sales revenue for the 1998-1999 period. Public Counsel’s argument merely goes to the weight this fact should be given by the Commission in the evaluation of the evidence. Therefore, the Commission denies Laclede’s motion to strike those portions of Public Counsel’s Reply Brief.

Both Staff and Public Counsel also state that Laclede’s request for the Commission to take administrative notice of the GSIP Monitoring Report is an attempt to supplement the record contrary to 4 CSR 240-2.110(10). The fact that the \$900,000 was an estimate has been established. The only purpose for the Commission to take notice of the GSIP Monitoring Report would be to use the facts in the report to make a decision in this case, which would clearly be inappropriate. Therefore, the Commission determines that Laclede’s request to take administrative notice should be denied.

Stipulation and Agreements

Staff, Laclede, Public Counsel, MIEC, AmerenUE, and the Missouri Energy Group filed the Stipulation on September 3, 1999, which superseded the Partial Stipulation and Agreement filed on September 1, 1999. In accordance with paragraph 12 of the Stipulation, Laclede filed additional information related to the rate design, class cost of service, and related tariff issues. The Stipulation is attached to this Report and Order as Attachment A and the additional filing made on September 13, 1999, along with its cover letter is attached as Attachment B. No objections to the Stipulation or requests for hearing were filed and so the Commission will treat the Stipulation as unanimous pursuant to 4 CSR 240-2.115.

The Stipulation provides for the resolution of many issues. The signatories agreed to the following:

1. That the revenue requirement amounts reflected on Attachment 1 of the Stipulation accurately reflect the impact on Staff’s case on the issues that have been resolved. These

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amounts assumed a return on equity of 9.5 percent and were exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar tax or taxes.

2. That depending on the Commission's decision, adjustments may need to be made to any revenue requirement amounts granted to Laclede in connection with: (a) Laclede prevailing on any of the remaining contested issues; (b) for any amount as a result of the true-up hearing in excess of the initial true-up allowance of \$7,341,000 as alleged in Staff's case; and (c) adjustments to the dollar values to reflect the Commission's resolution of any remaining issue affecting those values.
3. That Laclede shall continue to book, for financial purposes, expense levels associated with pensions and post-retirement benefits other than pensions (OPEB) in accordance with Financial Accounting Standards Board Statements (FAS) 87, 88, and 106, respectively. Laclede's accounting shall continue to reflect the: (a) actual market value of the pension fund assets rather than the market-related value previously used by Laclede; (b) amortization of any resulting unrecognized net gains and losses over a five-year period; (c) use of the prospective "smoothing" mechanism described in Attachment 3 to the Stipulation. The gains and losses shall be calculated, on the first dollar basis, for all pension lump sum settlements, to the extent permitted by FAS 88. The parties further agreed that the rates resulting from this Stipulation make provision for recovery of pension costs on a FAS 87 and 88 basis for all qualified pension plans and recovery of OPEB costs on a FAS 106 basis.
4. That the OPEB, SERP, Y2K, and MGP accounting authority orders (AAOs) granted by the Commission in Case No. GR-98-374 shall be terminated effective August 1, 1999, subject to certain conditions as listed in paragraph 4 of the Stipulation. These conditions include the establishment of regulatory assets, the amortization of those assets, the agreement not to propose the exclusion of those balances during the amortization period, the agreement not to propose that the balances be included in rate base, and the capitalization of costs subsequent to March 1, 1998, for efforts to

make its information systems and its computerized voice and data systems Y2K compliant.

5. That Laclede should get an AAO to continue to defer and book to Account 182.3 costs for its Safety Replacement Program (SRP) and the details of that AAO as outlined in paragraph 5 of the Stipulation.³
6. That the Stipulation does not preclude Laclede from filing an application requesting an AAO on any cost or revenue item.
7. That Laclede shall notify its customers at least twice a year of the availability of the Insulation Financing Program.
8. That Laclede shall, for book purposes, be authorized to continue to normalize certain income tax timing differences by recording and recognizing in any future rates deferred income tax expense for such differences, provided that the parties shall have the right to review and propose a different treatment of such timing differences in Laclede's next general rate case proceeding.
9. That Laclede will continue to maintain its books and records so that any costs that are related to Laclede's unregulated activities and affiliated companies may be tracked.
10. That Laclede and Staff will begin a "Project" for the purpose of investigating the cause and effect of changes in the air temperature readings observed at Lambert Field as outlined in paragraph 10 of the Stipulation.
11. That Laclede will provide Staff with actual customer billing data in a readable electronic format.

³ The issue of whether this AAO should be effective for longer than two years without the necessity of Laclede initiating a general rate case proceeding is a contested issue that was not resolved by the Stipulation.

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12. That the class cost of service, rate design, and related issues shall be resolved in accordance with the terms set forth in Attachment 2 of the Stipulation and the more detailed description of the tariff terms filed by Laclede on September 13, 1999.

At the True-Up Hearing, on October 7, 1999, counsel for Laclede reported that most of the true-up issues had been resolved as stated in Staff Witness Doyle Gibbs' testimony. The exceptions are the revenues for customer growth and capital structure related to short-term debt. The parties stated that they agreed that the true-up revenue requirement is \$5,139,000 with further adjustments needed for the resolution of the customer annualization and short-term debt calculations. Public Counsel also indicated at the true-up proceeding that it agreed with Mr. Gibbs' testimony regarding the computer maintenance and customer locates.

The Commission has reviewed the agreement as amended and the additional information related to the agreement. The Commission finds the agreement just and reasonable and will approve the First Amended Partial Stipulation and Agreement including its attachments and additional information filed on September 13, 1999.

Discussion of Contested Issues and Summary of the Evidence Return on Equity

Laclede recommended a return on equity of 12.75 percent. Laclede's witnesses presented testimony that its recommendation equals an effective market return of approximately 10 percent based on the market value of Laclede stock over the past several years. Laclede presented evidence that the company's actual growth for the 12-month period ending July 31, 1999, was less than 1 percent of its overall customer base of approximately 620,000 customers.

Staff Witness Broadwater confirmed that Laclede's service area was very stable and mature with a heating saturation level of about 94 percent. Staff estimated annual sales growth of about 1 percent to 1.5 percent to be attributed to customer growth.

Laclede's witnesses also testified that the customer growth Laclede has been experiencing has brought added costs as customers migrate from the City of St. Louis to the suburban areas. Laclede contends that the incidence of "urban sprawl" requires it to make substantial investments in facilities to serve customers that are actually relocating and therefore not generating new revenues, and to continue to pay for the fixed costs of its older facilities. Laclede also presented testimony that these migrating customers are leaving less energy efficient housing in favor of newer housing with more energy efficient features and appliances creating a further reduction in usage. Exhibit 113 indicated that the average use per residential customer had decreased and that the number of residential customers had increased from 1990 to 1998.

Laclede Witness Olson testified that unregulated companies, such as those included in the S&P 500, have been averaging returns on equity for the last decade of approximately 18 to 20 percent. Mr. Olson also testified that compound market returns for these companies have been even greater. Laclede argued that this change in the capital markets supports its proposition that Laclede stock is less attractive to investors than investments in unregulated companies. Laclede also argued that changes in the stock market have resulted in an increase in the market-to-book ratio for Laclede stock. According to Laclede, this makes it difficult to obtain a reasonable return on equity result through the use of the traditional method where a market-based return on equity is derived and then applied to book value.

Laclede presented evidence that the market value of its stock has climbed to a level approximately 1.5 to 1.8 times above its book value. As a result Laclede illustrates that an investor who requires a 10 percent return on his investment will receive an effective return of only 6.7 percent based on the market value. In the deposition of Staff Witness Broadwater, an example is provided showing that Staff's recommended 9.5 percent return on equity would yield a return on the market value of the stock of 6.3 percent.

Laclede's recommended return on equity of 12.75 percent was derived, according to Laclede Witness McShane, from an analysis of the returns being earned or required by other local distribution companies (LDCs) with adjustments for the differences in risks. Ms. McShane did a discounted cash flow (DCF) analysis of thirteen LDCs and arrived at an estimated return on equity of 10.5 percent. Ms. McShane then made an adjustment to this return for the market-to-book ratio, which resulted in her 12.75 percent return on equity recommendation.

Public Counsel Witness Burdette criticized Ms. McShane's analysis because she included a company with Missouri operations in her comparison. Public Counsel and Staff argued that Ms. McShane's analysis is circular because the comparison of returns is based on companies subject to the jurisdiction of this Commission, which sets their returns.

Staff criticized the market-to-book adjustment that Laclede made to its DCF analysis. Staff Witness Broadwater testified that Laclede's DCF model produced a result before adjustments of 10.5 percent which is very close to Staff's DCF result of 10.24 percent. Staff also argued that the Commission has traditionally rejected such market-to-book adjustments and it is not consistent with the DCF model.

Staff's recommended return on equity was derived by a DCF analysis of Laclede. Staff presented evidence that a reasonable growth rate for Laclede should be from 3.25 to 4.00 percent. This was based on a review of Laclede's actual dividends per share, earnings per share, book values per share, and projected growth rates. Staff used this range of growth rates in calculating its DCF analysis. Staff's DCF analysis resulted in its recommendation of 9 to 10 percent return on equity.

Staff further presented evidence that it verified that its recommended return on equity would be reasonable for Laclede by conducting a risk premium analysis, a

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Capital Asset Pricing Model (CAPM) analysis, and a DCF analysis for seven comparable companies. The result of Staff's risk premium analysis showed the average of the risk premium analysis for comparable companies to be in the range of 9.84 to 11.45 with the average being 10.8 percent. Staff's risk premium analysis for Laclede resulted in an estimated return of 10.66 percent. Staff admitted this could also be considered a reasonable rate of return. The result of Staff's CAPM analysis showed that the return on equity for the seven comparable LDCs fell within the range of 9.66 to 10.23. The result of Staff's CAPM for Laclede was a return in the range of 9.08 to 9.65 percent.

In Staff's cost of equity analysis, it compared the results of its DCF analysis with the DCF of seven comparable LDCs. The result of that analysis produced a DCF cost of equity ranging from 9.44 to 11.07 percent for the comparable companies, with the average being 10.24 percent. Staff Witness Broadwater testified that Laclede's DCF analysis of comparable companies before adjustments and its own DCF analysis of comparable companies result in very similar returns.

Staff also analyzed the reported return on equity and the market-to-book value of the seven comparable LDCs. Staff's witness testified that the average return on year-end common equity for the seven comparable companies was 10.81 percent and the return on year-end common equity reported for Laclede for 1998 was 10.8 percent.

Laclede Witness Fallert's testimony attempted to contradict Staff and Public Counsel's company-specific DCF analysis. Mr. Fallert's testimony was intended to demonstrate that the DCF analysis produced an absurdly low required return on equity when compared to returns that have been authorized or allowed for energy companies in Missouri and elsewhere. Laclede argued that the company-specific analysis relied upon by Staff and Public Counsel is not consistent with the legal standard requiring the Commission to examine the returns being earned by other companies with comparable risks.

Short-Term Debt

With regard to Laclede's capital structure, the amount of short-term debt was at issue. The evidence showed that the average short-term debt over the 12-month period ending March 1999 was \$79 million⁴. However, Laclede presented evidence showing that it had issued \$24 million in bonds and \$25 million in equity in the spring and early summer of 1999. Laclede argued that the short-term debt calculation should reflect the annualized effect of these issuances.

⁴The actual number was \$79,429,667; however, for convenience in this Report and Order some numbers have been rounded.

Laclede presented testimony that the average monthly short-term debt balance for the months of June and July 1999 was \$35.2 million. Laclede presented testimony that the short-term debt amount should be based on a 12-month average with a downward adjustment to reflect the annualized effect of the two permanent financings issued. Laclede recommended that the Commission include \$29 million in short-term debt. Laclede also argued that if Staff and Public Counsel's recommendations are followed, the company will be in danger of losing its AA credit rating, because of a level of short-term debt over 10 percent of the total capital structure.

Staff's evidence included testimony that over the 42-month period from October 1995 to March 1999, Laclede's average daily short-term debt balances less construction work in progress is approximately \$58 million. Staff Witness Broadwater also testified that the balance over the last 24 months was approximately \$66 million and the balance over the last 12 months was approximately \$79 million. Staff argued that this shows a trend in the increase of short-term debt balances of Laclede.

Public Counsel also argued that the \$79 million level of short-term debt should be included. Public Counsel argued that the coincidental timing of the rate case with the bond and equity issuances should not be a reason to assume the amount of short-term debt will stay at the lower level. Testimony from Public Counsel's witness indicated that the Commission should consider the 12-month average.

Revenue Collection Lag

The number of days to be considered as Laclede's revenue collection lag is another issue pending before the Commission. According to Laclede Witness Buck's testimony, Laclede calculated the most significant portion of the revenue collection lag, the customer bills to sales customers, by dividing average daily billings into the average receivable balance to yield the number of days of billing included in receivables. Receivables for the 12 months ending December 1998 were used. Revenues and other billing items are an average of the 12 months ending November, 1998 and December 1999.

This turnover ratio analysis in combination with the other portions of the lag calculation resulted in Laclede's argument that 34.8 days should be the revenue collection lag. Mr. Buck also testified that the Laclede's revenue lag time is based on actual customer billing and payment data for the test year.

Mr. Buck testified that 34.8 days is a reasonable revenue collection lag because not all customers pay within the time frames set out in Laclede's tariffs. Mr. Buck testified that approximately 5 percent of Laclede's customers are on special payment plans under the Cold Weather Rule, which significantly increases the revenue collection lag. Another factor that Mr. Buck indicated increases the revenue collection lag is uncollectible accounts which remain part of the accounts receivable balance for approximately seven months until they are "written off."

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Staff argued that Laclede has not shown that its proposed revenue collection lag period is just and reasonable. Staff recommended that the Commission set the revenue collection lag at 25.4 days. Staff computed this revenue collection lag based on a sample of Laclede's accounts from the 12-month period ending February 1998 as used in Case No. GR-98-374. Staff excluded uncollectible accounts from its sample arguing that Laclede has an opportunity to recover for these bad debts as an expense. Staff also argued that no other utility regulated by the Missouri Public Service Commission has a revenue collection lag of more than 21 days.

Laclede argued that Staff did not show that its sample was statistically significant. Laclede also argued that Staff incorrectly excluded customers with less than 12 months of billing history from its sample.

Advertising Expense

The arguments regarding the issue of advertising expenses basically revolved around two themes. Staff and Public Counsel presented testimony that the Commission should continue to categorize the advertisements of Laclede into five categories under the standards set out in the case Re: Kansas City Power and Light Company, 28 Mo. P.S.C. (N.S.) 228 (1986) (hereinafter referred to as KCPL). These categories are general, safety, promotional, institutional, and political. Staff and Public Counsel's witnesses testified as to which category each of Laclede's advertisements should fall, and as to the policy reasons for continuing to categorize advertisements in this manner.

Laclede argued that the KCPL standard should be abandoned for a method set out in its testimony. Laclede argued that the KCPL standard creates inconsistent treatment of similar advertisements, is unreasonable because not all advertisements fit in one of the categories, and creates an impossible standard to meet. Laclede Witness Hargraves testified that Laclede has developed an alternate approach. Laclede argued that its alternate approach would allow it to recover a reasonable amount for advertising expenses based on revenues.

Laclede proposed that a reasonable amount of advertising expense for the Commission to allow would be .5 percent of the utility's overall revenues during the test year or the previous five to ten years. In addition, Laclede suggested that the company would only be allowed to recover actual costs up to the .5 percent amount and would exclude political advertisements. The testimony indicated that currently the company spends about .2 percent of revenues on advertising.

In the alternative, Laclede argued that if the Commission continues to follow the KCPL standard, it should allow recovery of 100 percent of the test year expense for promotional advertising. Laclede presented testimony that 100 percent of the promotional advertising should be allowed because customers receive valuable information regarding natural gas and its relative costs and efficiencies. Laclede also stated that customers benefit through the spreading of fixed costs if Laclede

maintains or expands its large customer base through promotional advertising. Laclede's witness admitted that there is no competition from any other natural gas company for Laclede's business. However, Laclede argued that the promotional advertising expenses are necessary because Laclede must compete for customers with the providers of electricity, specifically AmerenUE, in its service area. Laclede's witness also admitted that natural gas and electric companies have been competing for customers for decades.

Laclede provided two pieces of evidence to support its argument that the benefit to the customers outweighed the cost with regard to its promotional advertising. The first of these items was the executive summary of a 1990 survey (Marketeam survey). The actual survey and its results were attached to Public Counsel Witness Bolin's testimony. The survey results included information from 103 of Laclede's customers. Of those 103 customers, four indicated that advertising was a source that led them to choose natural gas, whereas other methods, such as past experience with gas and friends/other homeowners, received much larger responses. Public Counsel and Staff argued that the Marketeam survey fails to provide a causal link between Laclede's promotional advertising and the choice of natural gas. Public Counsel and Staff also argued that there is no indication of validity of the results in terms of absence of bias or methods used in conducting the survey.

The second supporting document that Laclede provided was its own calculations of benefits attached as part of Mr. Hargraves' testimony. Public Counsel and Staff argued that this document is based wholly on self-serving and unsupported assumptions.

Staff argued that Laclede must prove a less vague and quantifiable relationship exists between the cost associated with promotional advertising and its benefits to ratepayers.

Public Counsel argued that the Commission has historically held that where a company is regulated under traditional rate base/rate of return regulation, it is the shareholders, not the ratepayers, who should bear the expense of promotional advertising which encourages the gas and electric companies to compete. Case No. GR-96-285, In the Matter of Missouri Natural Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Missouri Service Area.

Sunset Period for the SRP Accounting Authority Order

The Commission in this Report and Order will approve the granting of an AAO to Laclede for the deferral of its costs of its Safety Replacement Program (SRP) as agreed by the parties in the Stipulation. However, the issue of when the AAO should expire was not addressed in the Stipulation. Staff and Public Counsel argued that the AAO should expire after a two-year period. Staff Witness Rackers stated that an AAO should be used as a means to "mitigate regulatory lag between rate cases, not as a substitute for or a means to avoid a rate case."

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Laclede Witness Fallert proposed a slightly different approach to the AAO. Laclede proposed that the AAO for SRP costs be granted for three years subject to certain conditions. Laclede suggested that during this three-year period it would be required to submit reports to Staff and Public Counsel indicating the amounts being deferred. No less than six months before the three-year period expires, Laclede would then be required to request that the Commission decide whether the AAO should be continued beyond the third year without a general rate case filing. Laclede proposes that other parties would have an opportunity to respond to the request and then the Commission could make a decision. If the Commission determined that a rate case was necessary, Laclede would be required to file a rate case within six months of the Commission's decision or the AAO would be terminated.

Staff and Public Counsel argued that Laclede's proposal would extend the period of the AAO from beginning to end to as much as five years while a rate case was pending. Staff and Public Counsel argued that this process would further complicate the regulatory process. Staff also argued that the traditional two-year expiration date provides clarity and certainty and requires minimal oversight while giving the company a sufficient period of time in which to defer costs. Staff and Public Counsel argued that, because an AAO should only be granted for extraordinary events, it should not be necessary to prolong the deferral beyond two years without a request for general rate relief being made.

Depreciation — Net Salvage Value

In determining depreciation rates, the parties did not agree as to the method for calculating net salvage value. Laclede Witness Kottemann testified that the Commission has traditionally used the straight-line amortization system to calculate Laclede's depreciation rates. In the traditional depreciation rate formula, net salvage equals gross salvage minus the cost of removing the property from service. Mr. Kottemann explained in his testimony that the net salvage percentage equals the net salvage for a period of time divided by the original cost of the property retired during that same period of time. Mr. Kottemann testified that many natural gas assets have a negative net salvage value and corresponding percentage.

Staff Witness Adam proposed that the "[n]et salvage should recover the current actual net salvage amounts, not an average over the life of the current plant." Staff argued that Staff's depreciation calculation will charge "Laclede's customers annually for a net salvage amount, equal to, or nearly equal to, the amount Laclede is spending annually for net salvage." Staff argued that currently Laclede is recovering more in depreciation for net salvage than it is spending. Staff Witness Adam testified that ratepayers will pay \$2.3 million more in depreciation annually under Laclede's method of calculation.

Laclede argued that Staff's method of calculation is not consistent with Generally Accepted Accounting Principles (GAAP). Laclede stated that Mr. Adam's calcula-

tion “assumes that the average dollar amount of net salvage that Laclede has experienced in the past ten years will be the dollar amount of net salvage applicable to all future retirements.”

Staff argued in its Initial Brief that its method of determining net salvage will “allow Laclede to collect from its current customers an amount that approximates what Laclede currently expends for cost of removal.”

Depreciation — Natural Gas Holders

The second depreciation item at issue between Staff and Laclede is the depreciation accruals for removal of some of Laclede’s natural gas holders.

Staff recommended that Laclede not be allowed to recover any additional depreciation amounts for its natural gas holders until Laclede, via its Chief Executive Officer, makes an irrevocable commitment to remove the gas holders by a date certain. Staff Witness Adam testified that Laclede has over recovered its capital investments in the four gas holders by approximately \$65,000. Mr. Adam testified that there is no expected interim net salvage value and that the current customers should not pay for final removal of any of the four gas holders.

Laclede argued that the cost of removal should be depreciated over the next ten years. Laclede Witness Kottemann testified to the history of this issue between Staff and Laclede. Mr. Kottemann testified that in Case No. GR-94-220, Staff Witness Adam supported the continuation of the depreciation accrual for the gas holders, but Staff opposed an increase of the estimated cost of removal because the cost was not verifiable. Mr. Adam testified that in Laclede’s next rate case, Case No. GR-96-193, he supported the inclusion of some of the removal costs based on an environmental engineering study conducted by Black & Veatch, but recommended that better information be obtained regarding the cost of remediating the sludge in the gas holders. Mr. Kottemann also testified that Laclede arranged with Creamer Environmental, Inc., to estimate the cost of remediating the sludge in the gas holders. Mr. Kottemann testified that the estimate developed in conjunction with Creamer Environmental, Inc., was incorporated into the gas holder depreciation rate in this case.

Off-System Sales Revenue

Staff Witness Imhoff proposed two tariff language changes to clarify Laclede’s purchase gas adjustment (PGA) tariffs to define how off-system sales⁵ will be treated and accounted for in the event the Commission does not renew Laclede’s gas supply incentive plan (GSIP). The first change is to add a sentence at the end of Sheet No. 15, Paragraph (A), which reads, “The total Purchased Gas Costs shall be credited for all profits from off-system sales transactions.” The second change would affect Sheet No. 21, Paragraph (5). The new Paragraph (5) would read:

⁵ Off-system sales are revenues received by the Company from its sale of natural gas to customers are not on the company’s distribution system.

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The Deferred Purchased Gas Cost Account shall be credited for those revenues received by the Company for the release of pipeline transmission or leased storage capacity to another party. Such revenues will be allocated to firm sales, including Large Volume Transportation and Sales Service (LVTSS), and firm transportation customers, consistent with the allocation of capacity reservation charges set forth in Section A.2.b. of Laclede's tariff. The Deferred Purchased Gas Cost Account shall be credited for those revenues received by the Company for all off-system sales. For the purpose of allocating these revenues to the Deferred Purchased Gas Cost Accounts, 50% of the foregoing net revenues shall be deemed gas supply related and allocable to firm sales customers only and 50% shall be deemed transportation capacity related and allocable to both firm sales customers and firm transportation customers. This allocation is consistent with the allocation of capacity reservation charges set forth in Section A.2.b., unless the net revenues from off-system sales do not include the provision of transportation service, in which case 100% of such net revenues shall be allocable to firm sales customers.

Mr. Imhoff testified that Staff's proposed tariff language would insure that 100 percent of all off-system sales revenue would go to ratepayers. In the alternative, Staff recommended that the Commission impute the off-system sales revenues in the revenue requirement. Staff Witness Wallis testified that the amount to be imputed is approximately \$2.5 million. Mr. Wallis testified that this revenue amount is based on the three-year average of the off-system sales profits, which Laclede experienced in its three most recent actual cost adjustment (ACA) periods. As Staff stated in its Initial Brief, Mr. Wallis also testified that without the profits from the off-system sales transaction being included in Laclede's revenue requirement and without a GSIP in place, "Laclede will retain 100% of the profits from the off-system sales transactions, even though the transactions are funded by the ratepayers through the transportation reservation and gas supply demand charges which the customers pay through the PGA/ACA process."

Laclede states that on September 9, 1999, the Commission issued its Report in Order in Case No. GT-99-303, in which the Commission determined that the revenues received by Laclede from its off-system sales should be addressed in Laclede's rate case proceeding rather than as a continuing part of Laclede's GSIP. Laclede argued that the level of off-system sales revenues imputed in this case should be its most recent annual level of \$.9 million. Exhibit 125HC indicates that the \$.9 million is a projection for the 1998-1999 year. Laclede argued that the Commission should use the \$.9 million because of the downward trend in off-system sales revenues as demonstrated by Exhibit 45 in Case No. GT-99-303, which was incorporated as part of Exhibit 125HC of this proceeding.

Public Counsel Witness Shaw testified that the Commission should consider historical off-system sales revenue in determining the amount to be imputed. Public Counsel recommended that \$2.4 million be imputed for off-system sales revenues. Public Counsel argued that this amount considers the downward trend by establishing a baseline that is below Laclede's three-year average of net off-system sales. Public Counsel used an average of actual numbers for a three-year period less \$100,000 to adjust for possible market changes.

Laclede argued that both Staff and Public Counsel's recommendations are in excess of off-system sales revenues that Laclede has earned in recent years under the GSIP and are not supported by the current trend in decreasing off-system sales revenues. Laclede also argued that the Commission has recognized the importance of trends. For instance, Laclede cites *Re: Southwestern Bell Telephone Company*, 2 Mo. P.S.C. 3d 479, 488 (1993), where the Commission adopted an annualized approach instead of an average because of a trend in revenues.

Service Area Description in Tariff

Staff Witness Gray testified that Laclede's tariff needs a more accurate and understandable description of service area. Staff proposed that Laclede be required to list the county, township, range and section number in the tariff description of unincorporated areas. In his testimony, Mr. Gray listed five reasons this tariff change should be made; however, Staff conceded in its Reply Brief that three of those five points were made in error. Staff's remaining arguments are that utilities can use the descriptions to help plan their future facilities and in planning for future growth.

Both Laclede and AmerenUE objected to this additional requirement and presented evidence that it would be burdensome for the company with little or no corresponding benefits for the ratepayer. AmerenUE Witness Difani also testified that the utilities would not find the expanded descriptions to be helpful.

Customer Annualization

As part of the Stipulation the signatories agreed that Staff and Laclede would each use its own methodology with regard to determining the annualization of customers. The signatories also agreed that the average of the two amounts would be used to determine the adjustment to revenue requirement for customer growth. No party disputes this fact. The Commission by this Report and Order will find that the Stipulation, including this method of determining annualized customer growth, is in the public interest and should be approved. The issue remains, however, as to whether or not Staff used the same methodology for computing customer annualization at true-up as it had during its direct case.

Laclede argued that Staff used a different methodology to complete its true-up calculations of customer annualization than it did to calculate the customer annualization in its direct case. Laclede argued in its Initial Brief that according to Mr. Fallert's testimony, Staff updated "only one component of its methodology and did not adjust the Staff's current month's customer level based on a ten year average

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of how that monthly customer level has compared to the annual average customer levels.” Laclede further argued that this is a selective approach to true-up and that it could not have anticipated that Staff would have calculated its customer annualization at true-up in this manner.

Staff Witness Westerfield testified that Staff used the same methodology for calculating the annualized customer growth revenues at true-up as it used in calculating those revenues through March 1999 for its direct case. Ms. Westerfield testified that Staff had estimated its true-up customer annualization for the period from the end of March through July during the course of its direct case. Ms. Westerfield stated that this estimate was substantially different from the actual true-up numbers. Ms. Westerfield testified that the true-up required a substantial adjustment to the revenue requirement to the detriment of Laclede.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Return on Equity

The recommendations of Laclede, Staff, and Public Counsel for return on equity range from 9 to 12.75 percent. Staff conducted a CAPM, risk premium, and DCF analyses of seven comparable LDCs in order to determine that its recommended return on equity range of 9 to 10 percent was reasonable. The results of the return on equity analyses conducted by Staff of the comparable companies were return on equity results ranging from 9.11 to 11.45 percent. The Commission finds that it is reasonable to use the DCF analysis.

Laclede used a DCF analysis of thirteen comparable LDCs; however, Laclede made adjustments to its DCF analysis. Laclede’s DCF analysis before its adjustments for market-to-book value resulted in a 10.5 percent return on equity. Staff argued that market-to-book adjustments have not traditionally been allowed by the Commission. Staff admitted that a return on equity of up to 10.66 would be a reasonable result. Therefore, the Commission finds that a return on equity of 10.5 percent is just and reasonable.

Short-Term Debt

The Commission finds that the average short-term debt over the most recent 12-month period is approximately \$79 million. The Commission finds that Laclede issued \$24 million in bonds and \$25 million in equity in the spring and early summer of 1999. Laclede argued that these issuances should be reflected in the short-term debt

calculation. According to Staff's testimony, the trend over the 42-month period from October 1995 to March 1999 is an increase in the amount of Laclede's short-term debt with an average monthly balance during that period of \$58 million. Therefore, the Commission finds that Laclede's recommendation of a \$29 million short-term debt balance is not reasonable or consistent with evidence presented that the short-term debt balance is increasing. Instead, the Commission finds that the average daily short-term debt balance of \$58 million over the 42-month period is representative of the actual trend toward increased short-term debt experienced by Laclede. Therefore, the Commission finds that the amount of short-term debt to be considered in the capital structure of the company should be \$58 million.

Revenue Collection Lag

The revenue collection lag issue is not as straightforward as the evidence presented to the Commission suggests. Laclede presented evidence that the revenue collection lag is 34.8 days and Staff presented evidence that the revenue collection lag is 25.4 days.

Staff did not include data for customers with less than 12 months of billing, which shortened the average number of days when compared to Laclede's data. On the other hand, Laclede included data from uncollectible accounts, which lengthens its average number of days. What is missing from the evidence is the specific effect that each of these factors has on the number of days. Thus, the Commission must decide if Laclede's revenue collection lag is supported by sufficient evidence and if it is just and reasonable.

The Commission finds that Laclede's actual customer data for the test year is more complete than the data used in Staff's calculations. The Commission further finds that a revenue collection lag of 34.8 days is just and reasonable and should be used to determine Laclede's revenue requirement.

Advertising Expense

The Commission finds that the proposal of a cap on advertising expenses set at .5 percent of total utility revenues of Laclede is not supported by competent and substantial evidence. The Commission could not fulfill its duties of determining if Laclede's expenses on advertising were prudent without some review of the advertising. The Commission will continue to follow the standards set out in the KCPL case.

Laclede argued that it should be allowed to recover 100 percent of its promotional advertising. Staff and Public Counsel presented testimony that the promotional advertising of Laclede was not a necessary expense. The current KCPL standard allows the cost of promotional advertising to be included in the cost of service if the company can prove that the benefits to the ratepayers of the advertisements exceed the costs. The Commission finds that neither the Marketeam survey nor Laclede's additional analysis is sufficient to support a finding that the benefits to ratepayers exceed the cost of promotional advertising. Therefore, the Commission finds that the

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categorization of advertisements as applied by Staff should be used in determining the advertising costs to be included in Laclede's cost of service.

Sunset Period for SRP Accounting Authority Order

The Commission in this Report and Order will approve the granting of an AAO to Laclede for the deferral of its costs of its SRP. The Commission must now decide when the AAO should expire. Staff and Public Counsel argued that an AAO should be used to mitigate regulatory lag, not to avoid a rate case. Staff and Public Counsel also argued that the traditional two-year period of an AAO provides for adequate deferral time for the company while maintaining clarity and simplicity. Finally, the Staff and Public Counsel argued that the two-year deferral provides for the least amount of regulatory oversight.

The Commission agrees with Staff and Public Counsel that the purpose of a AAO is to defer extraordinary costs. Therefore, the AAO should not be allowed to continue for lengthy periods without the company asking for rate relief. However, the Commission understands the argument of Laclede that given today's regulatory climate, a two-year deferral is a relatively short period of time. If the company needs rate relief it would have to ask for it no later than the end of the first year of the AAO period to be certain that the AAO will not expire before the new rates become effective. This puts the company in the position of having to come before the Commission more frequently than it might otherwise to ask for rate relief.

The Commission finds that a three-year expiration of the AAO with periodic reports of the deferred amounts to the Staff and Public Counsel is reasonable, provided that the company seeks rate relief after the second year of the AAO. That is, the AAO will expire at the end of the third year unless the company has begun the ratemaking process at the beginning of the third year. There will be no opportunity to extend the AAO pending the outcome of a rate case. This will allow the company a full two-year deferral period and ensure that the AAO is not extended longer than three years without a rate case being established.

Depreciation—Net Salvage

Staff and Laclede disagree about how to estimate net salvage value. Staff argued that the Commission should look at the actual amounts the company is paying per year for the cost of removal to determine what those costs will be in the future. Laclede argued that the future cost of removal should be estimated and spread over the life of the asset.

The Commission finds that Laclede has failed to meet its burden of showing that the depreciation calculation, with regard to net salvage as proposed by Laclede is just and reasonable. Staff's calculation will allow Laclede to recover the amounts it is currently spending for net salvage without overrecovering from its ratepayers, which is a just and reasonable result. Therefore, the Commission finds that the

calculation of net salvage value for the determination of depreciation rates shall be done in accordance with Staff's recommendations.

Depreciation—Natural Gas Holders

Staff argued that Laclede should cease all depreciation accruals with regard to its natural gas holders until its Chief Executive Officer makes a commitment to demolish the holders by a date certain. Laclede argued that it has done everything that Staff has asked up to this point with regard to estimating the cost of removing the gas holders and including the cost of remediating the sludge. The Commission finds that Laclede has recovered its capital investment in the four gas holders. The Commission finds that there is no expected interim net salvage value of the natural gas holders. Because Laclede has not committed to removing the gas holders, the Commission finds that it is not just and reasonable for current customers to pay for the expense of removal when the ratepayers may receive no benefit from those payments.

Off-System Sales Revenue

The Commission finds that Staff's recommended tariff language is in the public interest should be included in Laclede's tariff. The Commission also finds that Laclede's most recent projection of \$.9 million in off-system sales revenues is supported by the current trend in decreasing off-system sales revenues. Therefore, the Commission finds that the amount of off-system sales revenue imputed in Laclede's revenue requirement should be \$.9 million.

Service Area Description in Tariff

Staff has proposed that Laclede expand the service area descriptions in its tariff to include the county, as well as the township, section, and range numbers for unincorporated areas. Both Laclede and AmerenUE objected to this additional requirement and presented evidence that it would be burdensome for the company to expand its tariff in this manner with little or no corresponding benefits for the ratepayers. The Commission finds that Staff's recommendation is not supported by competent and substantial evidence that it is in the public interest.

Customer Annualization

The Commission by this Report and Order finds that the Stipulation, including its method of determining annualized customer growth is in the public interest and should be approved. However, at the True-Up Hearing an issue arose as to whether or not Staff had indeed used the same methodology for computing customer growth at true-up as it had during its direct case. Staff Witness Westerfield testified that Staff used the same method for calculating its true-up figures as it used in calculating those numbers through March 1999. The Commission finds that Ms. Westerfield's testimony was credible. The Commission finds that Staff used the same methodology for calculating its customer annualization at true-up as it used to calculate its customer annualization through March of 1999. Therefore, the Commission finds

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that the adjustment to revenue requirement for customer annualization should be in the amount as determined by Staff.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Laclede Gas Company is a public utility engaged in the provision of natural gas service to the general public in the state of Missouri and, as such, is subject to the general jurisdiction of the Missouri Public Service Commission pursuant to Chapters 386 and 393, RSMo 1994. The Commission also has the authority to prohibit implementation of gas service rates that are unjust or unreasonable rates. Section 393.130, RSMo 1994.

The burden of proof to show that a proposed tariff is just and reasonable is upon the utility. Section 393.150.2, RSMo 1994.

The orders of the Commission must be based on substantial and competent evidence, taken on the record as a whole, and must be reasonable and not arbitrary, capricious, or contrary to law. Section 536.140, RSMo 1994.

Based upon its findings of fact, the Commission concludes that in order to set just and reasonable rates, Laclede Gas Company's revenue requirement will be increased in the amount of \$11,240,000 as set out in this Report and Order. For the same reason, the Commission concludes that the tariff language as submitted by Laclede on January 26, 1999, is not supported by competent and substantial evidence and shall be rejected.

The Commission may resolve a contested matter by adopting a stipulation and agreement of the parties. Section 536.060, RSMo Supp. 1998.

The proposed Stipulation and Agreement, with additional information filed by Laclede Gas Company on the September 13, 1999, is treated as unanimous by operation of rule 4 CSR 240-2.115, is in the public interest, and is approved.

Laclede Gas Company has a constitutional right to a fair and reasonable return on its investment. *State ex rel. Missouri Public Service Company v. Fraas*, 627 S.W.2d 882, 886 (Mo. App. 1981).

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments and other business undertakings which are attended by corresponding risk and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economic management to maintain and

support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield Waterworks and Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679 (1923).

[T]he return to the equity owner should be commensurate with returns on investment in other enterprises having corresponding risks. That return, moreover, should be sufficient to insure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital.

Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 586; 62 S.Ct. 736, 743; 86 L.Ed. 1037.

All relevant factors must be considered in establishing rates for a public utility. State ex rel. Missouri Water Co. v. Public Service Commission, 308 S.W.2d 704, 718-719.

IT IS THEREFORE ORDERED:

1. That Exhibit 113 related to information on residential customer usage is admitted.
2. That Exhibit 114HC related to information on studies regarding the efficiency of homes of customers is admitted.
3. That Exhibit 115 related to Laclede Gas Company's stock value in the last 12 to 24 months is admitted.
4. That Exhibit 117 related to the return on equity of Missouri gas companies other than Laclede Gas Company is admitted.
5. That Exhibit 125HC consisting of the relevant portion of the official record from Case No. GT-99-303 is admitted.
6. That Laclede Gas Company's motion to strike portions of the Office of the Public Counsel's Reply Brief filed on November 12, 1999, is denied.
7. That Laclede Gas Company's request filed on November 12, 1999, to take administrative notice of its Gas Supply Incentive Plan Monitoring Report is denied.
8. That the Commission approves the First Amended Partial Stipulation and Agreement and the additional information filed by Laclede Gas Company on September 13, 1999, which are marked as Attachment A and Attachment B, respectively, and made a part of this Report and Order.
9. That Tariff No. 9900539 submitted on January 26, 1999, is rejected.
10. That Laclede Gas Company is hereby directed to file revised tariff sheets with a thirty-day effective date in accordance with the findings in this Report and Order, which should include the increase to its revenue requirement of \$11,240,000 and all other changes consistent with this order.

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11. That Laclede Gas Company shall incorporate the changes to its tariff at Sheet No. 15, Paragraph (A), and Sheet No. 21, Paragraph (5), as recommended by Staff and as set out herein.

12. That the above ordered increase in revenue requirement will be applied as specified in the First Amended Partial Stipulation and Agreement.

13. That Laclede Gas Company's return on equity should be 10.5 percent.

14. That the amount of short-term debt balance to be considered in the total capital structure of Laclede Gas Company should be \$58 million.

15. That the revenue collection lag shall be 34.8 days.

16. That the categorization of advertisements as applied by the Staff of the Missouri Public Service Commission should be used in determining the advertising costs to be included in Laclede Gas Company's cost of service.

17. That the Accounting Authority Order for Laclede Gas Company's Safety Replacement Program cost deferrals shall expire three years from the effective date of this order unless extended as part of a general rate relief request by Laclede Gas Company made no later than two years after the effective date of this Report and Order.

18. That Laclede Gas Company shall submit quarterly reports to the Staff of the Missouri Public Service Commission and the Office of the Public Counsel stating the amounts being deferred by the Safety Replacement Program cost Accounting Authority Order.

19. That the calculation of net salvage value for the determination of depreciation rates shall be done in accordance with Staff's recommendations.

20. That Laclede Gas Company will not be allowed a depreciation accrual with regard to its natural gas holders in this rate case.

21. That the amount of off-system sales revenue imputed in Laclede's revenue requirement should be \$.9 million.

22. That the recommendation of the Staff of the Missouri Public Service Commission to require Laclede Gas Company to add a more detailed service area description is rejected.

23. That the adjustment to revenue requirement for customer annualization should be in the amount as determined by the Staff of the Missouri Public Service Commission.

24. That any objection not ruled on is overruled, any motion not ruled on is denied, and any exhibit not admitted is excluded.

25. That this Report and Order shall become effective on December 24, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules.

Case No. GR-99-315
Decided December 21, 1999

ORDER OF CLARIFICATION

On December 14, 1999, the Commission issued its Report and Order that approved the First Amended Partial Stipulation and Agreement and resolved the contested issues presented at the evidentiary hearing. On December 16, 1999, Laclede Gas Company (Laclede) requested expedited clarification of the Report and Order.

Laclede seeks clarification of portions of the Commission's order that appear inconsistent. The Report and Order contains the following ordered paragraphs:

10. That Laclede Gas Company is hereby directed to file revised tariff sheets with a thirty-day effective date in accordance with the findings in this Report and Order, which should include the increase to its revenue requirement of \$11,240,000 and all other changes consistent with this order.
 11. That Laclede Gas Company shall incorporate the changes to its tariff at Sheet No. 15, Paragraph (A), and Sheet No. 21, Paragraph (5), as recommended by Staff and as set out herein.
- ***
16. That the amount of off-system sales revenue imputed in Laclede's revenue requirement should be \$.9 million.

Laclede argues that paragraphs 11 and 16 are inconsistent in that they would require Laclede to credit customers with 100 percent of off-system sales revenues and impute the amount of off-system sales revenue in Laclede's revenue requirement. Thus, Laclede argues that it would be required "to credit its customers twice for earnings realized from off-system sales." Laclede also states in its request that this result would be inconsistent with the Commission's Report and Order in Case No. GT-99-303 and with the argument of the Staff of the Missouri Public Service Commission (Staff) that the proposed PGA language was an alternative to imputing off-system sales revenue in the revenue requirement.

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The Commission issued an order on December 17, 1999, shortening the time for responses to the request for clarification. Staff filed its response on December 20, 1999. In its response, Staff concurred that clarification was needed and suggested that because Laclede has requested an expedited tariff effective date, the Commission should clarify the Report and Order no later than December 21, 1999.

The Commission has reviewed Laclede's request for expedited clarification, Staff's response, and the Report and Order and finds that clarification is necessary. The Commission intended to require that Laclede's customers receive the benefits of profits from its off-system sales revenue because those profits are supported by the customers' rates through the transportation reservation and gas supply demand charges in the purchased gas adjustment and actual cost adjustment (PGA/ACA) process. The Commission did not intend for the Report and Order to cause Laclede to credit its customers twice for the off-system sales revenue. Therefore, the Commission will clarify its Report and Order as ordered below.

Because of the requests for expedited approval of Laclede's tariff sheets filed in response to the Report and Order, this clarification, and the upcoming holidays, the Commission requests that Staff inform the Commission of the earliest date Staff believes Laclede's tariff sheets could become effective.

IT IS THEREFORE ORDERED:

26. That Laclede Gas Company's request for expedited clarification is granted.
27. That the Commission clarifies its Report and Order issued on December 14, 1999, by striking the first sentence of the first full paragraph on page 34, titled "Off-System Sales Revenue", and substituting the following sentence:

The Commission finds that it is in the public interest for Laclede's customers to benefit from profits of its off-system sales revenue.
28. That the Commission clarifies its Report and Order issued on December 14, 1999, by striking ordered paragraph 11 in its entirety.
29. That the Staff of the Missouri Public Service Commission inform the Commission of the earliest date Staff believes Laclede's tariff sheets could become effective.
30. That this order is effective on December 24, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Dippell, Senior Regulatory Law Judge

In the Matter of the Petition of the City of Fulton, Missouri, for Approval in Accordance with 4 CSR 240-40.030(4)(HH)3, that It Was Impracticable to Construct an Emergency Replacement to Accommodate Instrumented Inspection Devices.

Case No. GO-2000-279

Decided December 14, 1999

Gas §10. Where City sought approval by the Commission under Regulation 4 CSR 240-40.030(4)(HH)3, that it was impracticable for the City to construct an emergency replacement section in its natural gas distribution pipeline in such a way as to accommodate instrumented internal inspection devices, approval would be granted where repairs after damage by a contractor to the 15.5 mile long, 8-inch steel transmission pipeline operated by the City, which was the only feed serving some 4,000 residential, commercial and industrial customers, required installation of a pair of bottom-out line stoppers, each including a 90-degree short radius elbow which does not permit passage of instrumented internal inspection devices, and the relocation to a lower elevation of some 640 feet of the transmission line, approval would be granted.

ORDER GRANTING PETITION

On October 15, 1999, the City of Fulton (City) filed its petition for approval by the Commission under Regulation 4 CSR 240-40.030(4)(HH)3, that it was impracticable for the City to construct an emergency replacement section in its natural gas distribution pipeline in such a way as to accommodate instrumented internal inspection devices. On October 25, 1999, the Commission issued its Order Directing Notice which set November 15, 1999, as the deadline by which persons seeking to intervene in this matter must file their applications. No applications to intervene were received.

The Order of October 25, 1999, also directed the Staff of the Missouri Public Service Commission (Staff) to investigate the circumstances contained in the application and to file a memorandum including a recommendation as to whether or not the application should be granted. Staff filed its recommendation on November 22, 1999. No objections to the Staff recommendation were filed and the period for filing such has elapsed.

The requirement of a hearing is met when an opportunity to be heard has been provided and no proper party has requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d, 494, 496 (Mo. App. 1989). As there were no requests for a hearing, the Commission is authorized to grant the requested relief based on the verified application.

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Discussion

Commission Rule 4 CSR 240-40.030(4)(HH)1. requires that new and replacement segments of natural gas transmission lines “be designed and constructed to accommodate the passage of instrumented internal inspection devices.” Rule 4 CSR 240-40.030(4)(HH)3., in turn, states that:

An operator encountering emergencies, construction time constraints or other unforeseen construction problems need not construct a new or replacement segment of a transmission line to meet paragraph (4)(HH)1., if the operator determines and documents why an impracticability prohibits compliance with paragraph (4)(HH)1. Within thirty (30) days of discovering the emergency or construction problem the operator must petition, under section 190.9 of 49 CFR part 190, for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable.

Federal regulation 49 CFR Section 190.9, at (b)(1)(i), instructs operators to direct their petitions, in the case of intrastate pipeline transportation, to “[t]he State agency certified to participate under 49 U.S.C. Section 60105.” In Missouri, that agency is the Missouri Public Service Commission. The state agency shall make a recommendation to the Administrator of the Research and Special Programs Administration (RSPA), United States Department of Transportation (USDOT). The state agency’s recommended decision shall be the decision of the administrator unless it is modified or reversed within ten business days of receipt. See 49 CFR Section 190.9(d).

According to City’s verified petition, the impracticability in question arose on September 17, 1999, when a contractor damaged the 15.5 mile long, 8-inch steel transmission pipeline operated by the City. Repairs to the line, the only feed serving some 4,000 residential, commercial and industrial customers, required installation of a pair of bottom-out line stoppers and the relocation to a lower elevation of some 640 feet of the transmission line. The bottom-out line stoppers, each including a 90-degree short radius elbow, do not permit passage of instrumented internal inspection devices. In addition to explaining why the bottom-out line stoppers were the only feasible repair available in the circumstances, the City also points out that its line includes six other such fittings and that, consequently, instrumented internal inspection devices cannot be used on its line anyway.

Staff recommends that the Commission approve the City’s petition. In addition to the impracticality of repairing the line to accommodate an inspection device that cannot pass through the line in any event, Staff notes that City’s line is subject to fewer safety risks than most gas transmission lines. Its diameter is small and its operating pressure (320 psig) is substantially lower than most other lines. City’s line is coated, cathodically protected against corrosion, and has no history of corrosion damage or leakage. Corrosion is the focus of instrumented internal inspection

devices, Staff states. The overall public and building exposure for this line is low. Staff notes that similar repairs have been approved by RSPA, USDOT, for similar obstructed pipelines in other states.

Having considered the verified petition and the recommendation of the Staff, the Commission will approve the petition. The Commission finds that an impracticability exists such as prevents City's compliance with paragraph (4)(HH)1. of Rule 4 CSR 240-40.030.

IT IS THEREFORE ORDERED:

1. That the petition filed by the City of Fulton on October 15, 1999, is approved.
2. That the Records Department of the Commission shall attach City's petition, filed on October 15, 1999, and Staff's memorandum, filed on November 22, 1999, to this Order as Attachments 1 and 2, respectively.
3. That the Records Department of the Commission shall transmit certified copies of this Order and its attachments, by overnight mail or delivery service, to:

Ms. Kelly Coyner, Administrator
U.S. DOT—Research and Special Programs Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Richard B. Felder, Associate Administrator for
Pipeline Safety
U.S. DOT—RSPA—Office of Pipeline Safety
DPS-1
400 Seventh Street, S.W., Room 7128
Washington, D.C., 20590

Mr. Ivan Huntoon, Regional Director
U.S. DOT—RSPA—Office of Pipeline Safety—Central Region
City Center Square, Suite 1120
1100 Main Street
Kansas City, MO 64105

4. That this order shall become effective on December 24, 1999.
5. That this case may be closed on December 27, 1999.

Lumpe, Ch., Crumpton, Drainer, Murray and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

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In the Matter of the Monitoring of the Experimental Alternative Regulation Plan of Union Electric Company.*

Case No. EO-96-14

Decided December 23, 1999

Electric §§1, 9, 21. Evidence, Practice and Procedure §§8, 30. Expense §78. Rates §§3, 37, 65, 104. The Commission found that the terms of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted the Commission to review certain provisions of the Stipulation and Agreement. The Commission first determined whether a proposed adjustment was permitted in one of the provisions of the approved Stipulation and Agreement, and if so, then the Commission will consider the substantive issue raised by the proposed adjustment.

Electric §§1, 6. Evidence, Practice and Procedure §§8, 30. Expense §§16, 25. Rates §§3, 37, 65, 104. The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, other computer costs, and merger and acquisition costs to be considered because Section 3.f.vii of the Stipulation and Agreement allowed the parties to bring issues to the Commission which the parties could not resolve themselves regarding the operation or implementation of the Experimental Alternative Regulation Plan (EARP).

Electric §§1, 6, 45. Evidence, Practice and Procedure §§8, 30. Expense §§16, 25. Rates §§3, 37, 65, 104. The Commission found that the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 permitted adjustments relating to territorial agreements, Year 2000 (Y2K) costs, and decommissioning fund deposits to be considered because Section 3.f.viii of the Stipulation and Agreement allowed the parties to bring issues to the Commission for review involving a new category of costs which has not been previously included in any ratemaking proceeding.

Electric §§1, 6. The Commission does not guaranteed any specific rate determination for the territorial agreement transaction, whether or not expressly stated in the Commission order approving the territorial agreement.

Electric §§1, 6. Evidence, Practice and Procedure §§8, 30. Expense §§16, 25. Rates §§37, 65, 104. Where territorial agreements resulted in a loss in revenues as a result of the exchange of territories, which is not offset by an expected change or substantial growth in the specific customer areas included in the exchange, an adjustment is appropriate to avoid a detriment to the ratepayers in the credit sharing and rate reduction proceedings currently pending before the Commission.

Electric §1. Evidence, Practice and Procedure §§8, 30. Expense §§16, 17, 25. Rates §§37, 65, 104. Unusual and non-recurring costs, such as Y2K costs, should not be expensed as part of the AmerenUE's Final Earnings Report and Credit Sharing Report. The Commission ordered Y2K costs deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined in a regular rate case.

Accounting §§8, 9. Electric §1. Expense §§6, 25, 33. For expenses incurred after December 15, 1998, public utilities are required to comply with American Institute of Certified Public Accountants (AICPA) Statement of Position 98-1 as it relates to computer software programs and other qualifying computer costs, which recommends capitalizing and amortizing expenses for qualifying computer costs, such as major software programs.

Electric §1. Expense §§6, 25. There was insufficient evidence that the costs referred to as "Other Computer Costs" were more appropriately capitalized and amortized than expensed for expenses incurred before December 15, 1998.

*See pages 319 and 522, Volume 5 MPSC 3d, and page 306, Volume 6 MPSC 3d, for other orders in this case.

Electric §1. Evidence, Practice and Procedure §8. Expense §§22, 17, 25, 51. Under the Stipulation and Agreement, where a significant variation in the level of expenses occurred relating to Injuries and Damages expenses, an adjustment may be made to the expense only if there is no reasonable explanation for the significant variation. The Commission found that there was a significant variation, and that a reasonable explanation, and therefore, no adjustment to the Injury and Damages expense account was necessary.

REPORT AND ORDER

I. Procedural History

This case was established pursuant to the Commission's order in Case No. ER-95-411 issued on July 21, 1995, to monitor and receive reports concerning the Experimental Alternative Regulation Plan (EARP) adopted by Union Electric Company d/b/a AmerenUE (AmerenUE, UE or Company). The Commission's July 21 order made all parties in Case No. ER-95-411 parties in this case. The parties to Case No. ER-95-411 included:

Missouri Public Service Commission Staff (Staff)
Office of the Public Counsel (Public Counsel)
Union Electric Company d/b/a AmerenUE
Monsanto Company¹
McDonnell Douglas Corporation
Anheuser-Busch, Inc.
MEMC Electronic Materials
Barnes and Jewish Hospitals²
Emerson Electric Company
Ford Motor Company
Holnam, Inc.
Husmann Refrigeration Company
ISP Minerals
River Cement Company (formerly known as RC Cement Company)
Asarco Inc.
The Doe Run Company
Cominco American
Missouri Retailers Association
UtiliCorp United Inc. d/b/a Missouri Public Service (UtiliCorp)

¹ Group of Industrial Intervenors known as and hereinafter referred to as Missouri Industrial Energy Consumers (MIEC) includes Monsanto Company, Anheuser-Busch, Inc., MEMC Electronic Materials, Ford Motor Company, Holnam, Inc., Husmann Refrigeration Company, ISP Minerals, Adam's Mark Hotel, Alcoa Foil Products (Alumax, Inc.), The Boeing Company, General Motors Corporation, Mallinckrodt, Inc., Procter & Gamble Manufacturing Company and Ralston Purina Company.

² Group of Industrial Intervenors known as and hereinafter referred to as Missouri Energy Group (MEG) includes Barnes-Jewish Hospital, River Cement Company and Emerson Electric Company.

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On August 8, 1995, Trigen-St. Louis Energy Corporation filed its application to intervene with the Commission, which was denied on September 1, 1995.

AmerenUE filed its final earnings report and proposed sharing report for the first year credit sharing on October 15, 1996. The Commission issued its order approving the first year credit sharing proposal on December 20, 1996. AmerenUE filed its final earnings report and proposed sharing report on October 14, 1997 for the second year credit sharing. The Commission approved the Stipulation and Agreement submitted by the parties resolving the second year credit sharing on July 1, 1998.

AmerenUE filed its final earnings report and proposed sharing report for the third year sharing credits on October 14, 1998. On November 23, 1998, AmerenUE filed its Request for Commission Guidance on Behalf of the Union Electric Company (AmerenUE). A corrected final earnings report and sharing report was filed on November 25, 1998.

As required by the Stipulation and Agreement approved by the Commission in Case No. ER-95-411, on November 24 and 25, 1998, respectively, both Public Counsel and Staff notified the Commission that the parties were unable to resolve their differences regarding issues which arose regarding the interpretation of the Stipulation and Agreement and its application by AmerenUE in the final earnings report and proposed sharing report. Public Counsel and Staff informed the Commission that the parties would need to bring these issues before the Commission for resolution. A prehearing conference was set for December 30, 1998. Upon the parties' motion, the prehearing conference was rescheduled for January 15, 1999. The parties were also ordered to file a proposed procedural schedule no later than February 1, 1999.

On behalf of the parties, Staff filed a proposed procedural schedule on February 1, 1999. In its responsive pleading filed on February 1, 1999, AmerenUE requested in the alternative that the Commission issue an order establishing further proceedings with respect to the meaning of the governing legal standard. After reviewing all responsive pleadings, the Commission issued its order regarding pending motions on March 18, 1999. In its order, the Commission denied AmerenUE's Request for Commission Guidance filed on November 23, 1998, and further denied AmerenUE's Alternative Request for an Order Establishing Further Proceedings with Respect to the Meaning of the Governing Legal Standard filed on February 1, 1999. The Commission also granted Staff's Motion for Leave to Late File Initial Report for Third Year Sharing Credit Calculation and Initial Report Respecting Weather Normalization of Earnings Shared with Ratepayers filed on November 25, 1998.

On March 16, 1999, counsel for the Missouri Retailers Association filed a Motion to Withdraw. On April 27, counsel for the Missouri Retailers Association filed a Motion to Withdraw indicating that the Missouri Retailers Association wished to withdraw as a party from this case. No objections were received to either of these

Motions to Withdraw. The Commission granted Missouri Retailer's Association leave to withdraw as a party on May 13, 1999.

On March 24, 1999, an Application to Intervene was filed by Adam's Mark Hotel, Alcoa Foil Products (Alumax, Inc.), The Boeing Company, General Motors Corporation, Mallinckrodt, Inc., Proctor & Gamble Company, and Ralston Purina Company. In their application, these intervenors indicated that they were members of the group of large customers of Union Electric Company known as "Missouri Industrial Energy Consumers" or "MIEC", whose other members were already parties to this case. On May 13, 1999, the Commission granted intervention to these additional members of MIEC.

On April 1, 1999, Union Electric filed a Motion to Strike portions of the Direct Testimony of Stephen M. Rackers, Arlene S. Westerfield and Michael G. Gruner, which was denied on May 13. On May 14, AmerenUE filed its Emergency Expedited Motion for Clarification and Partial Reconsideration with the Commission, which was denied on May 25. On May 25, AmerenUE filed its Motion to Strike the Surrebuttal Testimony of Robert E. Shallenberg, or in the Alternative, to Admit into the Record the Statement of Kenneth J. Rademan. Staff and Public Counsel filed their responses to AmerenUE's Motion to Strike on May 28. On June 1, the Commission denied AmerenUE's Motion to Strike but granted its request to admit the statement of Kenneth J. Rademan on the condition that Mr. Rademan submit to cross-examination by deposition on a date to be agreed to by the parties. Upon oral motion, the Commission also approved the submission of a statement by Public Counsel's witness Russell W. Trippensee. Mr. Trippensee was also made available for cross-examination by deposition.

The Commission adopted a procedural schedule on March 18, 1999. Direct testimony and schedules on behalf of Staff and Public Counsel filed on February 23, 1999 were accepted. Rebuttal testimony on behalf of AmerenUE was filed on April 2, 1999, and Surrebuttal testimony was filed on behalf of Staff and Public Counsel on April 19, 1999. The Commission amended its procedural schedule on May 13, 1999, requiring Staff to file a Statement of Issues by May 18, 1999, and all parties to file a Statement of Position no later than May 20, 1999. The evidentiary hearing was held on June 1, 2 and 3, 1999.

II. Late-Filed Exhibits

At the hearing, the Commission admitted into evidence Exhibits 1 through 28, Exhibit 30, and Exhibits 32 through 35.

On June 7, the Public Counsel filed the supplemental surrebuttal testimony of Russell W. Trippensee and this testimony was marked as Exhibit 37. On June 9, Exhibits 41 and 42 were marked and identified on the record in the deposition cross-examination of Russell W. Trippensee. Exhibit 41 is a PSC Press Release dated July

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21, 1995, and Exhibit 42 is a PSC Press Release dated May 7, 1996. On June 9, Exhibits 43, 44, 45, and 46 were marked and identified on the record in the deposition cross-examination of Kenneth J. Rademan. Exhibit 43 is a Memorandum from Steve Dottheim dated February 5, 1995. Exhibit 44 is a Memorandum from Steve Dottheim dated February 15, 1995. Exhibit 45 is a Memorandum from Steve Dottheim dated February 15, 1995. Exhibit 46 is a copy of the transcript from the proceeding held upon the formal presentation of the Stipulation and Agreement in Case No. ER-95-411.

On August 4, 1999, Public Counsel filed Exhibit 38. Exhibit 38 is a transcript of the cross-examination by deposition of Russell W. Trippensee, including reference to Exhibits 41 and 42, which were marked and identified in the deposition cross-examination record. On August 18, AmerenUE filed Exhibits 29, 31, 39, 40, and 47. Exhibit 29 is a revised computation entitled Union Electric\Black River Electric Cooperative territory agreement, which was requested at hearing as a correction to Exhibit 27. Exhibit 31 is entitled UE Company 1994-1998 Actual Financial Results, filed upon request by the Commission at hearing. Exhibit 39 is the supplemental rebuttal testimony of Kenneth Rademan. Exhibit 40 is the deposition cross-examination of Kenneth Rademan, including reference to Exhibits 39, 43, 44, 45, and 46, which were marked and identified in the deposition cross-examination record. Exhibit 47 is a compilation of documents related to computer software costs filed in response to questions posed by the Commission at hearing. On August 18, Staff filed Exhibits No. 36, 48 and 49. Exhibit 36 is a reconciliation document filed in response to an inquiry from the Commission regarding the dollar values of the issues remaining in dispute. Exhibit 48 is AmerenUE's response to Staff Data Request No. 96 and Exhibit 49 is an explanation and memorialization of the resolution of the two tax issues that were resolved by the parties before hearing. Staff requested leave to have Exhibits 48 and 49 so marked and that Exhibits 36, 48 and 49 be admitted into the record.

No objections were received to the admission of any late-filed exhibits. Therefore, late-filed Exhibits 29, 31, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 shall be admitted into evidence.

III. Discussion of Contested Issues

A. Case No. ER-95-411 Stipulation & Agreement

On June 12, 1995, a Stipulation and Agreement (Stipulation and Agreement or Agreement) was filed with the Commission in Case No. ER-95-411. This Stipulation and Agreement provided for the EARP. The Stipulation and Agreement was formally presented to the Commission in a hearing held on July 19, 1995. The Commission issued its Report and Order on July 21, 1995, approving the Stipulation and Agreement and specifically approving the EARP as described in the Stipulation and Agreement. The EARP approved by the Commission in Case No. ER-95-411 extended from July 1, 1995, until July 30, 1998, with calculations to be made each year to

determine if sharing of earnings in form of credits will occur. The Commission also found that any unresolved issue concerning sharing would be brought to the Commission. The parties further agreed in the Stipulation and Agreement that at the end of the plan, the parties would file reports which would include recommendations concerning the continuation or the ending of the plan.

AmerenUE alleged that if the Commission were to accept or approve any of the adjustments proposed by Staff or by the Public Counsel, the action of the Commission would constitute a breach of contract and impair the contractual obligations established by the Stipulation and Agreement in Case No. ER-95-411. In addition, AmerenUE alleged that approval of the adjustments proposed by Staff and the Public Counsel would effect an uncompensated taking of the company's property rights, deny the company's right to due process of law, and repudiate the representations of the Commission upon which the company reasonably relied, destroying the investment-backed expectations of the company created by those representations. AmerenUE conceded that the Commission's Staff has the important role in monitoring the company's compliance with the EARP as set forth in the Stipulation and Agreement in Case No. ER-95-411 to be sure that AmerenUE accurately follows the established accounting practices and the specified adjustments as set out in the reconciliation procedure. AmerenUE asserted that the reconciliation procedure should be a simple process, eliminating the need for intrusive regulatory oversight and time-consuming regulatory proceedings.

AmerenUE noted that the EARP Stipulation and Agreement in Case No. ER-95-411 should speak for itself. AmerenUE further agreed that the Commission must look at the specific terms of the agreement governing an activity to learn what the EARP provides concerning its operation or implementation with respect to that particular activity. AmerenUE pointed out that the threshold question in reviewing a proposed adjustment to the EARP final earnings report should be whether the adjustment is permissible under the Agreement. After the threshold issue is resolved, and the Commission has determined that the proposed adjustment may be considered under the Agreement, then the substantive issue of the proposed adjustment may be considered. Both Staff and Public Counsel have identified the provisions of the EARP Stipulation and Agreement indicating the basis upon which they believe each of their proposed adjustments may be considered in compliance with the EARP Stipulation and Agreement. Therefore, the Commission will consider each of the proposed adjustments by reviewing the threshold question regarding whether the adjustment is permissible under the EARP Stipulation and Agreement. Only if the proposed adjustment is permissible under the EARP Stipulation and Agreement will the Commission consider whether there is any basis in fact or law for the proposed adjustment.

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B. Territorial Agreements

Section 394.312, RSMo (1994), authorizes the Commission to approve or disapprove territorial agreements between electrical corporations, rural electric cooperatives and municipally owned utilities.

In Case Nos. EO-95-400, EA-95-416, and EM-96-6 (Case No. EO-95-400), the Commission considered and approved a territorial agreement between AmerenUE and Black River Electric Cooperative (Black River). In Case No. EO-95-400, Staff testified that the short-term effect of the exchange of assets involved in the territorial agreement proposed and approved in Case No. EO-95-400 showed a negative effect on earnings and an increase in positive earnings in the long term. In Case No. EO-95-400, both AmerenUE and Staff testimony indicated that AmerenUE had initially experienced a loss of nearly 6,000,000 kWh of load and more than \$400,000 in revenue as a result of the exchange of territory. Both AmerenUE and Staff testified as to the benefits offsetting the loss in revenue and sales per kWh. Staff testified that “based on the long-term results of the analysis, the Staff believes the transfer is not detrimental to the public interest from an economic viewpoint.” Exhibit No. 24, page 4, lines 20-21. However, Staff did testify that it was also recommending that this item be examined as part of the Staff’s calculation of annual sharing credits and AmerenUE’s EARP and that an adjustment to ameliorate the short-term negative effects on earnings, if warranted, should be considered as a part of the annual experimental program earnings review. The Commission approved the territorial agreement in Case No. EO-95-400 on June 7, 1996. Staff testified that the Commission made no rate determination regarding the net revenues associated with this territorial agreement. The Commission will take official notice of the facts that the Commission’s Report and Order in Case No. EO-95-400, was issued on September 25, 1995, the Report and Order on Rehearing was issued on March 22, 1996, and an Order Finalizing Approval of Territorial Agreement, Granting Certificate of Convenience and Necessity and Approving Tariffs was adopted on June 7, 1996.

On October 2, 1996, a Stipulation and Agreement was filed by the parties in Case Nos. EO-97-6, EA-97-55, and EM-97-61 (Case No. EO-97-6) wherein the parties to the Stipulation and Agreement requested the Commission approve the exchange of territory between AmerenUE and Macon Cooperative subject to the terms of the Stipulation and Agreement. In Case No. EO-97-6, the Stipulation and Agreement included a paragraph wherein

UE agrees that Staff has the right to re-examine the financial impacts of the territorial agreement as part of the annual sharing credits for UE’s current Experimental Alternative Regulatory Plan approved by the Commission on July 21, 1995. Adjustments to book earnings, based on more current data, can be proposed at that time, if necessary.

Ex. 2, Schedule 1-2, Paragraph A. AmerenUE's witness testified that AmerenUE proposed to transfer approximately 3,000 customers to Macon Cooperative in exchange for Macon Cooperative's transfer of approximately 1,000 customers to AmerenUE. AmerenUE's witness testified to the public interest goals served by the territorial agreement as benefits of the exchange.

In Staff's testimony, it was noted that AmerenUE had quantified the ongoing savings related to a consolidation of its service territory in Case No. EO-97-6 at \$418,611. Staff also testified that UE had quantified \$3,760,000 in savings associated with the elimination of construction costs and that the ongoing revenue requirement associated with this reduction in capital expenditures was \$752,000. Staff testified that AmerenUE had indicated that the other benefits to be realized by AmerenUE as a result of the territorial agreement are "virtually impossible to quantify at this time." Both Staff and AmerenUE testified that the territorial exchange between AmerenUE and Macon Cooperative would result in a net exchange of approximately 2,200 customers. This customer exchange was expected to result in the loss of approximately \$2,000,000 in revenues by AmerenUE. Staff testified in Case No. EO-97-6 that an increase in revenue requirement would occur as a result of the territorial exchange. Staff recommended that the Commission approve the Stipulation and Agreement on the condition that Staff be permitted to reserve the right to re-examine the financial impacts of the territorial agreement in this case as a part of the calculation of the annual sharing credits for AmerenUE's EARP.

In the instant case, Case No. EO-96-14, Staff is recommending adjustments associated with the territorial agreements approved by the Commission in Case Nos. EO-95-400 and EO-97-6. In addressing the threshold question of whether this specific adjustment is permissible under the agreement, Staff stated that Staff's recommendations in both Case No. EO-95-400 and Case No. EO-97-6 were conditioned on Staff being given the right to examine the effect of the exchange of territories on the earnings of AmerenUE in future sharing credit calculations. Staff further stated that Section 3.f.viii. of the Stipulation and Agreement approved in Case No. EO-95-411 provides

Staff, OPC and other signatories have the right to present to the Commission concerns over any category of cost that has been included in UE's monitoring results and has not been included previously in any ratemaking proceeding. (emphasis added.)

Exhibit No. 13, Appendix A, p. 10 of the Stipulation and Agreement. Staff testified that it was not aware of any previous ratemaking proceedings involving AmerenUE where earnings results were adjusted to prevent detriment to the ratepayers as a result of the effect of a loss of earnings in a revenue requirement determination proceeding. In addition, Staff noted that Section 3.f.vii. of the Stipulation and Agreement in Case

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No. ER-95-411 stated that “Staff reserves the right to bring issues which are related to the operation or implementation of the EARP to the Commission for resolution.”

AmerenUE testified that the net revenues reflected in the final earnings report were the direct result of Commission-approved orders approving the exchange of territories and customers between the companies and the cooperatives. Further, AmerenUE testified that because the company’s accounting methodologies for the net revenues resulting from the territorial agreements have been consistently applied prior to the agreement and throughout the three sharing periods, that the proposed adjustment does not involve a new category of cost.

The Commission specifically reserved the right for Staff to consider the effect of the Macon territorial agreement approved in Case No. EO-97-6 on the sharing credits in Case No. ER-95-411 by Commission order approving the Stipulation and Agreement containing such language. The Commission’s order in Case No. EO-95-400 did not contain the express reservation of the right of Staff to consider the effect of the Black River territorial agreement on the sharing credits. Nevertheless, the Commission made no rate determination regarding the net revenues associated with the territorial agreement in Case No. EO-95-400. Neither of the cases approving the territorial agreements were ratemaking proceedings. AmerenUE asserts that the proposed adjustments should not be considered because the net revenues resulting from these territorial agreements were addressed in Case Nos. EO-95-400 and EO-97-6. Further, AmerenUE claims that its accounting for the net revenues from the territorial agreements has been consistently applied, and therefore, territorial agreements is not a new category of cost which was not previously addressed in a ratemaking proceeding.

Staff witness Stephen Rackers testified that he had asked the company whether there had been any revenue increases in the area involved in the territorial exchange since the territorial agreements had been approved. Staff witness Stephen Rackers also asked AmerenUE whether there had been any customer growth. AmerenUE provided information related to revenue increases, but AmerenUE only provided information that cannot be related strictly to the customers involved in this exchange. In addition, AmerenUE reported to Staff that there had been no substantial customer growth in these exchanged areas and no information was provided that would change Staff’s recommendation. It is Staff’s position that the information provided in the original territorial agreement cases is accurate for the purpose of determining the ratemaking impact of these exchanges, Black River and Macon. Since both a loss of customers and revenues existed at the time of the approval of the territorial exchanges, and no adequate new growth information has been provided by AmerenUE, Staff argues that the Commission should order adjustments as recommended by Staff to ensure that no detriment to the ratepayers occurs in the credit sharing and rate reduction as a result of the Commission’s approval of the territorial agreements.

AmerenUE stated that Staff is not computing Staff's adjustments using the updated estimate of the impact of the territorial exchanges. AmerenUE provided a comparison of the revenues and kWh sales for the areas included in the Black River Cooperative territorial exchange to show that revenues for the twelve months ended June 30, 1998, compared to the twelve months ended June 30, 1996, have increased by \$276,000. AmerenUE also asserted that the company had received an immediate benefit from the Macon territorial exchange, estimating that the net revenues associated with the Macon Territorial Agreement increased approximately \$197,000. Staff noted that AmerenUE data is not based strictly on those customers involved in the territorial exchange but rather in the counties where those customers involved in the exchange are located. AmerenUE admitted at the hearing that it could not track the individual customers involved in the territorial exchange for comparison purposes any longer.

C. Year 2000 (Y2K) Costs

Year 2000 costs are those expenses related to the work performed by AmerenUE to modify its computer software for the Year 2000. In Case No. OO-99-43, the Commission stated:

The failure to deal with a Y2K problem in a timely manner may mean that the cost to correct this problem becomes unreasonably high when the issue must be dealt with, and corrected, on emergency basis. The Commission must ensure that if any such inefficiencies occur, they are not passed on to the Missouri ratepayers. However, it would be premature to use this case to determine whether the costs for Y2K correction should be borne by the shareholder or the ratepayer. . . While the cost issue may not need to be delayed until 2001, it is clear that the first order of business is avoiding any interruption in utility service to Missouri's ratepayers. Once that goal has been accomplished, assessing reasonable and prudent expenditures will be much clearer. Ex. 4, p. 2, line 17–p. 3, line 6, quoting from Case No. OO-99-43.

AmerenUE has included an expense in the amount of \$671,709 for the Year 2000 costs in the third year sharing period. Staff recommends that the Year 2000 costs be deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined.

Regarding the threshold issue of whether the Commission can consider a proposed adjustment under the Stipulation and Agreement in Case No. EO-95-411, Staff relies on paragraph 3.f.viii., *supra.*, because the rates and credits issue related to the Year 2000 costs have never been presented to the Commission in a ratemaking proceeding for recovery prior to this proceeding. AmerenUE contends that the Year

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2000 costs are computer maintenance repair costs which have been incurred for decades. AmerenUE alleges that referring to these costs as Year 2000 costs artificially narrows the frame of reference on what would otherwise be simply considered computer maintenance costs. AmerenUE stated that in no way can these Year 2000 costs be considered a new category of cost. AmerenUE stated despite all the attention the Year 2000 issue receives that Year 2000 costs are simply part of the category of costs incurred in maintaining and repairing computer software programs so that they may perform the functions it was originally intended to perform.

Staff stated that the EARP agreement, dated June 12, 1995, could not be structured in advance to address a cost that was largely unknown at that time. Therefore, Staff argues that the Year 2000 costs should be considered a “new costs” category under the agreement. Staff pointed out that the Year 2000 costs are occurring under a unique and radically different set of circumstances from computer maintenance activities that had occurred prior to the 1995 agreement. Staff further indicated that the Year 2000 costs are not a “garden-variety” maintenance expense as the Year 2000 costs relate to concerns which exists nationally that there may be large-scale national disruptions of electric power, telephone service, banking and other essential services due to the Y2K changeover. Staff further points out a number of efforts that AmerenUE has participated in or prepared specifically in response to the Y2K issues.

Beyond the threshold question, Staff asserts that Year 2000 costs constitute extraordinary, nonrecurring maintenance expenditures. For ratemaking purposes, Staff indicates that nonrecurring items like Year 2000 costs should not be charged to expense, as such treatment will unduly burden ratepayers in the year incurred if rates/credits reflect those costs. Staff testified that if such nonrecurring items are given rate treatment at all, the cost should be amortized to expense over a reasonable length of time. Staff also indicated that it is appropriate for future customers to share in the Year 2000 costs as they will share in the benefits of the project as well. Staff stated that it considers the Year 2000 costs to be ongoing because it will occur in more than one period, nonrecurring because after the Year 2000 there should not be any further Y2K costs, and unusual because of the broad impact that this issue may have on computer systems all over the world even though it should never happen again. For these reasons, Staff defines the Year 2000 costs as extraordinary.

Public Counsel testified that by expensing the Year 2000 costs for this project, the earnings reported to be shared between the company and the customers were less than Public Counsel believed appropriate. Public Counsel concurs with Staff in its recommendation that all costs associated with the Year 2000 project should be capitalized rather than expensed during the current sharing period.

The total external costs for AmerenUE, AmerenCIPS, and Ameren Services for the Year 2000 project for the third sharing period was \$1,042,700. No specific amount was made available for AmerenUE Missouri Electric because the Year 2000 project teams for AmerenUE were not divided by corporation but by function. Therefore,

various teams' costs would be allocated differently to AmerenUE, AmerenCIPS, and Ameren Services. According to AmerenUE's witnesses, the company has expensed the Year 2000 computer maintenance costs in accordance with the Federal Energy Regulatory Commission Uniform System of Accounts (FERC USOA). AmerenUE noted that the operating expense instructions of the USOA state that "work performed specifically for the purpose of preventing failure, restoring service ability or maintaining life of plant" should be expensed as maintenance costs. Therefore, AmerenUE determines that the repair and maintenance costs incurred for correcting the Year 2000 problem were done in order to prevent the failure of or restore systems to their normal state. AmerenUE noted that this accounting treatment has been an established accounting practice of the company for years, and is in accordance with the generally accepted accounting principles (GAAP). In particular, AmerenUE stated that this accounting policy is in accordance with the consensus reached in Emerging Issues Task Force (EITF) Issue No. 96-14, *Accounting for the Costs Associated with Modifying Computer Software for the Year 2000* (EITF 96-14).

In EITF 96-14, the task force reached a consensus that external and internal costs specifically associated with modifying internal-use software for the Year 2000 should be charged to expense as incurred. AmerenUE contends that the Year 2000 costs were accounted for in a consistent manner with previous accounting practices, the EARP agreement and the FERC USOA. AmerenUE also noted that the American Institute of Certified Public Accountant's (AICPA) Statement Of Position 98-1 (SOP 98-1), *Accounting for the Cost of Computer Software Developed or Obtained for Internal Use*, does not change the conclusions reached in EITF 96-14, which requires that external additional costs associated with modifying internal use software currently in use for the Year 2000 shall be charged to expense as incurred. The provisions of the AICPA Statement of Position 98-1 are effective for the financial statements for fiscal years beginning after December 15, 1998. SOP 98-1 does state that new internal-use software developed or obtained that replaces previously existing internal-use software should be accounted for in accordance with SOP 98-1.

Staff agrees that the EITF No. 96-14 does call for the expensing of Year 2000 costs; however, Staff notes that the EITF Abstract No. 96-14 also allows for the capitalization of some costs. Staff also noted that the USOA provides for the deferral of extraordinary costs and Staff believes that material Year 2000 costs constitute an extraordinary item. Staff noted in its testimony that two other companies have requested an order from the Commission to approve deferral of extraordinary Year 2000 costs. The Commission issued a deferral order to Laclede Gas Company in Case No. GR-98-374, authorizing treatment of Year 2000 costs as an extraordinary expense. In addition, the request of Missouri Gas Energy (MGE) in Case No. GO-99-258 is currently before the Commission wherein MGE has requested authority to defer Year 2000 costs, based on the interpretation that Y2K is an extraordinary event. Staff indicated its concern that AmerenUE receive the same rate treatment for these costs

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as other utilities and that they not be given a more favorable rate treatment through AmerenUE's interpretation of the EARP agreement. Staff stated that it was not aware that the Commission had at any time authorized a utility to recover nonrecurring and extraordinary expenses through the accounting device of immediate expensing. Staff recommends that UE accumulate these costs, and at the appropriate time, when the Year 2000 project is complete and all facts regarding prudence are available, a determination may be made regarding how the costs for this project should be recovered. Staff believes this position will allow the Commission to deal with the rate implications of this issue later in accordance with the order issued by the Commission in Case No. OO-99-43.

D. Other Computer Costs

In the third sharing period, UE has expensed the costs to develop three significant computer software systems. The three systems include CSS, a software product that replaces the existing consumer information system for Ameren. CSS involves the installation of Anderson Consulting's Customer/1 product. During the third sharing period, AmerenUE expensed the amount of \$8,823,859 related to CSS. AmerenUE also capitalized 6 percent of the CSS total project costs of \$22,500,000 resulting in a capitalized cost in the third sharing period of \$1,400,000.

The second significant computer software system, which UE has expensed in the third sharing period, is the EMPRV system. EMPRV is a power plant management program used to support company procedures and practices for the maintenance of equipment in the power plant as well as functions related to the maintenance of that equipment. AmerenUE has expensed \$468,763 in a third sharing period out of the total project cost of \$4,500,000.

The third significant computer software program expensed during the third sharing period is the AMRAPs system, which is a human resources and payroll data base known as the Peoplesoft human resources and payroll systems.

Staff testified that the policy of expensing these new software programs is inappropriate considering the significance of the amounts expended, the enhanced capabilities of the new systems compared to their predecessors, and the fact that the systems are intended to provide benefits over several future periods. Based upon these points, Staff alleges that these expenditures are in fact assets to AmerenUE which should be capitalized and treated as plant assets for ratemaking purposes. Staff indicated that it relied on paragraph 3.f.vii. of the Stipulation and Agreement in Case No. ER-95-411 which states

UE, Staff, and OPC and other signatories reserve the right to bring issues which cannot be resolved by them, and which are related to the operation and implementation of the plan, to the Commission for resolution.

Because Staff believes that these software programs should be considered assets, it is Staff's position that AmerenUE is implementing the plan improperly by expensing these assets. In addition, if these programs are assets, the CSS program would not be properly included in the implementation of the plan for the calculation of credit sharing because it was not "in-service" during the third sharing period. In support of its position that these computer software programs are assets, Staff notes that the AICPA's Statement of Position 98-1 will require these types of computer programs to be capitalized and amortized over some future period. SOP 98-1 becomes effective for all financial statements for fiscal years beginning after December 15, 1998. However, SOP 98-1 also stated "Earlier application is encouraged in fiscal years for which annual financial statements have not been issued." SOP 98-1 was issued March 4, 1998, by the Accounting Standards Executive Committee of the AICPA. Staff stated that it mentioned SOP 98-1 only to inform the Commission that it appears that GAAP are evolving in a direction consistent with that advocated by the Staff on this issue.

AmerenUE alleges that Staff has not met its threshold burden to show that the Commission may even consider the substantive arguments offered by Staff on the issue of the expensing of these three computer software program costs. AmerenUE noted that Section 3.f.viii. of the Stipulation and Agreement limits the permissible adjustments to "new categories of costs." Section 3.f.viii. of the Stipulation and Agreement indicates that the parties may "present to the Commission concerns over any category of cost that has been included in UE's monitoring results and has not been included previously in any ratemaking proceeding." AmerenUE stated that Staff's argument is without merit because the company began to install these programs during the first and second sharing periods of the EARP. AmerenUE stated that the company expensed those costs as incurred, as reflected in the final earnings reports for those periods that were adopted by the Commission.

Further, AmerenUE testified that it has historically expensed internally-developed software and information system costs. AmerenUE stated that many companies have long-standing policies to expense internally-developed software costs as incurred. AmerenUE's witness cited a notation from 1985 by the Financial Accounting Standards Board (FASB) in SFAS No. 86, *Accounting for the Cost of Computer Software to be Sold, Leased, or Otherwise Marketed* and, which stated:

The Board considered broadening the scope of this project to include costs incurred for an enterprise's development of computer software for its own use. After evaluation, the Board concluded that accounting for the cost of software used internally is not currently a significant problem and, therefore, decided not to broaden the scope for this project nor add a project on internal use software to its present agenda. The Board recognized that the majority of companies expense all costs of

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developing software for internal use, and the Board was not persuaded that this current predominant practice is improper. (Emphasis Added by AmerenUE witness Benjamin A. McKnight)

Ex. 15, p. 16, lines 3-15.

Staff questioned whether AmerenUE actually had a specific written policy that addressed the accounting policy for computer software costs. When Staff requested information available regarding company policy relating to the treatment of computer related items (hardware and software) in data request No. 16, the company responded

Initial purchases and replacements are considered capital expenditures. Purchases of software and hardware enhancements are expensed as incurred. The design, development, and installation of information systems software are also expensed as incurred.

Staff noted that company's response to the data request also indicated that the determination between capital and expense is based upon the "property unit catalog." In addition, AmerenUE supplied a copy of an accounting policy dated June 27, 1991, which dealt solely with personal computer procedures. Staff indicated that all of this information together seemed to contradict AmerenUE's witnesses' assertion that all computer software costs are expensed as incurred. Staff noted that the company's position of expensing the software costs is consistent with GAAP because prior to the effective date of SOP 98-1, it appears that accounting practices would allow the company to either expense or capitalize such software costs. As noted earlier in the statement of position 98-1, Schedule 10, page 10-5, SOP 98-1 indicates the FASB encouragement for companies to begin capitalization voluntarily as soon as possible. AmerenUE also indicated its intention of adopting SOP 98-1 on January 1, 1999, resulting in the capitalization of qualifying costs related to internal use software incurred after that date.

AmerenUE indicated in its response that the accounting treatment during the third sharing period, to expenses incurred as computer software costs, is consistent with the company's long established accounting methodology and was in accordance with GAAP and the EARP Agreement. AmerenUE stated that since the company's accounting for computer software costs was in agreement with its established accounting practices, which were in accordance with GAAP, a failure to apply the accounting methodologies under the EARP agreement did not occur. AmerenUE asserted that its accounting policy for computer software costs has clearly been to expense those costs as incurred. AmerenUE stated that these expenditures have been addressed in several ratemaking proceedings, and are therefore not a new category of cost.

If the threshold test is met, and the Commission determines that this issue is one which revolves around the appropriate implementation of the plan, then the Commis-

sion will need to consider Staff's claim that these computer software programs, CSS, EMPRV and AMRAPs, are assets which should be capitalized and amortized at the time that they have become used and useful. The Staff asserted that because the CSS project was not an asset in service during the third sharing period, these costs should not be reflected at all in the third sharing period results. AmerenUE confirmed that the CSS system was not in service until December 1998. Staff further recommended that the computer hardware and software costs related to EMPRV and AMRAPs be depreciated at the rate of 10%, citing other recent cases where computer software and hardware assets were authorized to use a 10% depreciation rate. Public Counsel also opposes the expensing of costs associated with the CSS, EMPRV and AMRAPs computer software programs.

Public Counsel stated that it believes that the costs incurred by the company to develop these computer systems should be capitalized and amortized over a period representative of the useful or service life of the system. Public Counsel also stated that the CSS software project was not used and usefulness in the provision of service to ratepayers during the third year sharing period. Public Counsel stated that it is reasonable to believe that the company's computer software projects will provide benefits to customers and shareholders for many years beyond the third sharing year of the first EARP agreement. Public Counsel stated that it believes that, for regulatory purposes, it is appropriate for AmerenUE to capitalize costs incurred in the third sharing year and amortize them over the expected lives of the systems. Public Counsel noted that while it may not be possible to match exactly the cost of the systems with the revenues achieved via the benefits the system provides the company, the accounting matching principle does require that an attempt to match the costs with the revenues should be made. Public Counsel noted that the essence of the matching principle is that as revenues are earned, certain assets are consumed or sold and services are used. The cost of those assets and services used should be recognized and reported in the period during which the related revenue is recognized. If the cost incurred provides future benefits, they should be recorded as an asset. Public Counsel stated that amortization of the capitalized costs, if allowed, would permit the company to recover all undisputed expenditures incurred. Based upon experience in the recent MGE case, Case No. GR-98-140, Public Counsel indicated that it believes that the new CSS system is likely to have an effective life of ten years or more. Public Counsel also stated that it is reasonable to assume that the new EMPRV power plant maintenance system and the new AMRAPs human resource system will last at least ten years as well. AmerenUE disagrees with Public Counsel regarding the ten-year effective life for the computer software systems. AmerenUE stated that given the rapid changes in technology and the significant ongoing maintenance requirement of software systems, that the intangible asset of software systems could not last for ten years. AmerenUE stated that a more appropriate life for the computer software systems would be a maximum of five years.

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E. Merger & Acquisition Costs

In the Stipulation and Agreement entered into and approved by the Commission on February 21, 1997, in Case No. EM-96-149, the parties agreed to the accounting treatment of transaction and transition costs resulting from the merger approved by the Commission in Case No. EM-96-149 in the Final Earnings Report for each year in the EARP following the merger. The Stipulation and Agreement stated

Actual prudent and reasonable merger transaction and transition costs (estimated to be \$71.5 million, which reflects the total Ameren Corporation ("Ameren") estimated merger cost presented to the Commission Staff ("Staff") and Office of the Public Counsel ("OPC") in the UE/CIPSCO, Inc. Merger Implementation Plan, less executive severance pay of \$1.6 million, but including costs incurred in 1995) shall be amortized over ten years beginning the date the merger closes. The annual amortization of merger transaction and transition costs will be the lesser of: (1) the Missouri jurisdictional portion of the total Ameren amount of \$7.2 million; or (2) the Missouri jurisdictional portion of the total Ameren unamortized amount of actual merger transaction and transition costs incurred to date. No rate base treatment of the unamortized costs will be included in the determination of rate base for any regulatory purposes in Missouri. (Emphasis added.)

The issue here involves the appropriate interpretation and calculation of the actual merger transaction and transition costs incurred to date. Section 3.f.vii. permits the parties "to bring issues which cannot be resolved by them, and which are related to the operation or implementation of the plan, to the Commission for resolution. Examples include disagreements as to the mechanics of calculating the monitoring report..."

Both Staff and Public Counsel testified that the annual amortization under Section 4 of the Stipulation and Agreement in Case No. EM-96-149 should be the lesser of the \$7.2 million or the ten-year annual amortization of the actual costs incurred to date. Both Staff and Public Counsel recited the calculations based on the company's responses to Staff's Data Request Nos. 23 and 55. The actual transaction costs reported as of June 30, 1998, are \$25,620,950, and the revised estimate of the actual transition costs is \$41,000,000. Therefore, the total transaction and transition costs equal \$66,620,950. The Missouri electric portion of this total transaction and transition cost is figured by multiplying the total amount times the allocation factor provided by AmerenUE in Staff data request response No. 31 (86.13 percent) for the 12 months ended June 30, 1997. The resulting amount was then divided by the ten years over which the actual prudent and reasonable merger transaction and transition costs were to be amortized which resulted in the amount of \$5,738,062. The Missouri

jurisdictional portion of the total Ameren amount of the estimated \$7.2 million, as multiplied by the allocation factor equals \$6,201,307. The annual amortization of merger transaction and transition costs will be the lesser of: (1) \$6,201,307; or (2) \$5,738,062.

The merger was consummated on January 1, 1998, and therefore only six months of the annual amortization was reflected in the final earnings report during the third sharing period. Staff and Public Counsel also prorated their recommended adjustment to include only six months of the amortized amount to be included in the earnings report for the third sharing year of the EARP agreement. Staff and Public Counsel proposed the appropriate amount to be included in the earnings report to be approximately \$2,869,031. AmerenUE had included the amount of \$3,100,656 in its proposed earnings report for the third year of the EARP. Staff and Public Counsel allege that AmerenUE has overstated its expenses by approximately \$231,623. Staff and Public Counsel proposed adjusting the \$7.2 million estimate to reflect a more accurate estimate of prudent and reasonable merger transaction and transition costs as of June 30, 1998, and amortizes that amount over the agreed-upon ten-year period.

AmerenUE alleges that Staff and Public Counsel are inserting words into the paragraph to change the meaning of the agreement in Case No. EM-96-149. AmerenUE contends that Staff and Public Counsel are dividing the actual transaction and transition costs by ten (years). AmerenUE stated that the Missouri jurisdictional portion of the total Ameren amount of \$7.2 million approximates \$6.2 million annually, while the Missouri jurisdictional portion of the total Ameren unamortized amount of actual merger transaction and transition costs included as of June 30, 1998, was approximately \$44.0 million. AmerenUE then contends that the annual amortization of the merger transaction and transition costs would be the lesser of: (1) \$6.2 million; or (2) \$44.0 million. Because AmerenUE finds that \$6.2 million is less than \$44.0 million, the company used the annual \$6.2 million dollar figure for its merger costs amortization in its final earnings report for the third sharing year period. Because the merger was consummated January 1, 1998, only six months of the annual \$6.2 million amortization was reflected in the final earnings report during the third sharing period, or \$3.1 million.

F. Decommissioning Fund Deposits

Pursuant to an order of the Commission issued in Case No. EO-85-17 and Case No. ER-85-160, AmerenUE makes deposits into the Nuclear Decommissioning Trust Fund and such funds are to be utilized to retire and clean up the Callaway Nuclear Plant and Site at the end of its useful operating life. On page 111 of the Report and Order issued by the Commission in Case No. EO-85-17 and Case No. ER-85-160, the Commission states:

The Commission believes UE should make payments to the fund in accordance with IRS regulations and does not oppose the use of the funds by UE between each payment if IRS regulations permit.

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The Internal Revenue Code (IRC) did not permit AmerenUE to make quarterly deposits to the decommissioning trust fund for the quarterly deposits due in March 1997, June 1997, September 1997, and December 1997 until AmerenUE received an order from the Commission. AmerenUE requested an order from the Commission with a finding that the level of decommissioning expense as supported in the latest decommissioning cost study was included in rates as required by the IRC. AmerenUE made the required deposits on March 11, 1998, after the Commission issued its order. AmerenUE still had the funds collected in rates for the quarterly deposits available to them for most of the third sharing period and was, in effect, earning on all these funds in the third sharing period. Staff is recommending that the “allowance for funds used during construction” (AFUDC) rate should be used to calculate the value to AmerenUE associated with having the use of the decommissioning funds in question from the dates the payments were due through March of 1998 when four payments were made for the quarterly deposits due March 1997, June 1997, September 1997, and December 1997.

In regard to the threshold question, Staff stated that it did not contemplate that the situation would arise where the company would not be able to make contributions to the decommissioning trust fund in a timely manner nor had the situation previously arisen or required Commission determination. As a result, Staff testified that this item had never been addressed in any previous ratemaking proceeding. Staff indicated that it believes that this matter could be addressed by the Commission under paragraphs 3.f.vii. and 3.f.viii. of the Stipulation and Agreement approved in Case No. ER-95-411. Section 3.f.vii. of the Stipulation and Agreement permits the parties to bring issues which cannot be resolved by them and which are related to the operation or implementation of the plan to the Commission for resolution. AmerenUE stated that the company’s treatment of decommissioning trust fund deposits in its final earnings report for the third sharing period is in accordance with the specific provisions of the EARP agreement and that these costs are not a new category of costs that have not been included previously in any ratemaking proceeding.

Staff stated that by not making the four quarterly deposits in 1997 until March of 1998, the company received a cash working capital benefit arising from the fact that AmerenUE had use of the decommissioning funds during the third sharing period prior to making up the catch-up deposit. Staff believes that an adjustment should be made in the third sharing period using the AFUDC rate to calculate the value AmerenUE received associated with the use of the decommissioning funds in question. Staff recommended reduction of expense by \$287,139 to represent the benefit realized by the company for having use of the 1997 decommissioning trust funds prior to the catch-up deposit in March 1998. Public Counsel stated that the funds deposited in the decommissioning fund are not to be used as a source of capital for the daily ongoing operations of the company and are not considered to be operating revenues or operating expenses of the current period. Under no circum-

stances should the funds, nor interest earned on the funds, be considered as a source of current operating capital. Public Counsel proposes an adjustment which imputes interest revenue to the company for the decommissioning funds it had in its possession from March 1997 to March 1998. Public Counsel stated that the funds and earnings are not a cash working capital item but rather should be classified as “other income and deductions” which include the booking of revenues associated with non-operating accounts. Public Counsel cited USOA Account No. 419 as an example for the booking of the interest revenues AmerenUE earned while holding the decommissioning funds. USOA Account No. 419 – Interest and Dividend Income is defined as

This account shall include interest revenues on securities, loans, notes, advances, **special deposits**, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies whether the securities on the interest and dividends are received are carried as investments are included to sinking or other special bond accounts. (Emphasis added by Public Counsel)

Public Counsel stated that the decommissioning fund deposits, if they had been made on time, would have earned approximately 9.25 percent annually. AmerenUE stated in its Securities and Exchange Commission 10K report for the fiscal year ended December 31, 1997, that “fund earnings are expected to average 9.25 percent annually through the date of decommissioning.” Based on the annual return of 9.25 percent, Public Counsel calculated that the return that would have been earned on the late deposits had they been paid on time is approximately \$300,398.

In addition to the interest for late decommissioning fund payments proposed by Staff, Public Counsel proposed an additional adjustment for the earnings on one more late payment. Public Counsel alleged that the March 1998 quarterly decommissioning fund payment was due to be deposited on or about April 25, 1998. Further, Public Counsel stated that the March 1998 payment did not occur until May 27, 1998, which was 32 days late. For this reason, Public Counsel calculated and included the interest earnings on this late payment in its proposed adjustment amount.

AmerenUE stated that the Commission had specifically addressed this issue and did not oppose the company using decommissioning funds between each payment and date. AmerenUE stated that the delay in payment was required by the IRC and that the company was not allowed to make payments to the decommissioning trust fund until the Commission issued its order. AmerenUE concluded that based on the fact that the company was complying with the specific terms of the EARP agreement, was in compliance with previous Commission orders and IRS regulations, a manipulation of earnings did not occur in this area.

AmerenUE pointed out that Staff’s calculation of the proposed adjustment is flawed because, in addition to the EARP agreement addressing the level of cash working capital, cash working capital items are factored into the rate base calculation

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for the final earnings report, and not these adjustments directly reducing expenses. Secondly, Staff uses the AFUDC rate to calculate its adjustment which ranges from 8 to 10 percent during the third sharing period. To the extent that the company was able to realize any benefits from the excess funds it had during the third sharing period, it would only realize a benefit from the use of those funds at its weighted average short-term borrowing rate, which ranged between 5 percent and 6 percent during the third sharing period. Finally, AmerenUE noted that Staff's calculation of the proposed decommissioning trust fund adjustment includes imputed interest earned on funds associated with deposits which were to be made during the second sharing period (March 1997 and June 1997). It is AmerenUE's position that once the second sharing period credits were settled, Staff relinquished its right to propose adjustments on these items during the third sharing period. AmerenUE recommended that if one would accept the proposed adjustment under the terms of the agreement, the adjustment should be a rate base adjustment in the final earnings report which would amount to an increase in the company's earnings under the sharing plan of approximately \$177,000 in the final earnings report for the third sharing period. Regarding Public Counsel's recommendation, AmerenUE testified that it is inappropriate to impute earnings on excess funds for deposits related to the second sharing period.

In surrebuttal testimony regarding the interest rates calculated for the purpose of the adjustment proposed by Staff, Staff testified that only the rates for interest applicable to the months of July 1997 through March 1998 were calculated for purposes of this adjustment. The third sharing period began July 1997 and for those funds still due owing interest was calculated for the period beginning July 1997 through March 1998 for all four quarterly deposits pending.

G. Injuries & Damages

During the first two sharing periods, AmerenUE incurred approximately \$5,950,000 and \$6,670,000 in injuries and damages expense, respectively. In the third sharing period, the expense for injuries and damages increased dramatically to \$20,270,000. In response to Staff's request for an explanation of the dramatic increase to the injuries and damages expense amount, AmerenUE explains that an exceptionally high number of large claims had been settled during the third sharing year period and that because of this increasing trend in litigation, the reserve balance was increased to offset possible future claim payments. Staff stated that it believes that the proposed adjustment may be made under the Stipulation and Agreement in Case No. ER-95-411 based on Section 3.f.vii:

UE, Staff, OPC and other signatories reserve the right to bring issues which cannot be resolved by them, and which are related to the operation or implementation of the plan, to the Commission for resolution. Examples include disagreements as to the mechanics of calculating the monitoring report, alleged violations of the Stipulation and Agreement, alleged manipulations

of earnings results, or request for information not previously maintained by UE. An allegation of manipulation could include significant variations in the level of expenses associated with any category of costs, where no reasonable explanation has been provided.

Staff stated that it believes that it would be inappropriate to reflect both the unusually high injuries and damages claims paid by or assessed against UE in the third sharing period and an increase in the additional accrual which brings the reserve to its highest level ever. Staff testified that the company had not provided a reasonable explanation for the increase to injuries and damages expense in the third sharing period.

AmerenUE stated that the company's accounting policy for injuries and damages expenses incurred in the third sharing period is consistent with the company's established accounting practice, which is in accordance with GAAP. AmerenUE noted that the injuries and damages expenses are recurring expenses that the company has encountered during the course of its business for decades, and therefore the injuries and damages expense is not a new category of costs but have not been addressed in previous ratemaking proceedings. AmerenUE noted that Staff is proposing an adjustment that is inconsistent with the EARP agreement. AmerenUE pointed out that the reconciliation procedure to the EARP agreement specifically provides that certain costs were to be normalized while others were not.

Staff cited Section 3.f.vii. of the EARP Stipulation and Agreement from Case No. ER-95-411 as that section which it proposes gives the Commission authority to make adjustments to the final earnings report in the third sharing year under the EARP plan. The relevant sentence in that section which the Staff appears to be relying on states "An allegation of manipulation could include significant variations in the level of expenses associated with any category of costs, where no reasonable explanation has been provided."

The Commission was asked to address the definition of the term "manipulation" as it was used in paragraph 3.f.vi. of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 by AmerenUE in its Request for Commission Guidance filed on November 23, 1998. On March 18, 1999, after reviewing the pleadings filed by all the parties, the Commission issued its order which noted that Staff and Public Counsel had requested review of certain issues and that they were "proceeding before the Commission pursuant to paragraphs 3.f.vii., 3.f.viii., 3.f.ix., and 3.f.x. of the Stipulation and Agreement approved by the Commission in Case No. ER-95-411, not paragraph 3.f.vi." In its order issued March 18, 1999, the Commission found that

If a party wished to proceed pursuant to Section 3.f.vi., the signatory parties including Staff and Public Counsel could file a formal complaint. While the Staff and Public Counsel have indicated a need for the Commission to resolve disputes under

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the Stipulation and Agreement Section 3.f.vii., no party has filed a formal complaint. Therefore, the Commission finds that this issue of the definition of the term “manipulation” is moot and needs not be addressed further by the Commission.

Section 3.f.vi. of the Stipulation and Agreement approved in Case No. ER-95-411 states

If Staff, OPC or other, [sic] signatories find evidence that operating results have been manipulated to reduce amounts to be shared with customers or to represent actual earnings or expenses, Staff, OPC or other signatories may file a complaint. .

Section 3.f.vi. uses the term “manipulated” in connection with the phrases “to reduce amounts to be shared with customers” or “to misrepresent actual earnings or expenses.” This paragraph seems to address a specific conduct that involves the act of manipulation.

In Section 3.f.vii., examples are provided of “issues which cannot be resolved by them, and which are related to the operation or implementation of the plan.” These examples include but are not limited to “alleged manipulations of earnings results.” In addition, this section goes on to further define manipulation in the statement “an allegation of manipulation could include significant variations in the level of expenses associated with any category of costs, where no reasonable explanation has been provided.” This is not a definition that is included in Section 3.f.vi. of the Stipulation and Agreement in Case No. ER-95-411. In addition, Section 3.f.vii. sets forth a different procedural mechanism than that which is identified in Section 3.f.vi.

Section 3.f.vii. states “The Commission will determine in the first instance whether a question of manipulation exists and whether the question should be heard by it.” However, the parties do not refer in Section 3.f.vii. back to the complaint process, which is set up in Section 3.f.vi. The organization of this Stipulation and Agreement may lead one to believe that these are two separate procedures. While it was not the Commission’s intention to preclude Staff or Public Counsel from proposing an adjustment under Section 3.f.vii. in its March 18, 1999, Order, there is some question as to whether an allegation of manipulation as defined under Section 3.f.vii. must be filed as a complaint pursuant to the process set forth in Section 3.f.vi. If the filing of a complaint were required, it would seem to make the last sentence in Section 3.f.vii. unnecessary. That sentence reads “The Commission will determine in the first instance whether a question of manipulation exists and whether the question should be heard by it.”

If one were applying the last sentence of Section 3.f.vii. to the adjustment proposed by Staff to the injuries and damages expense, the Commission would first be required to determine whether a question of manipulation exists. According to Section 3.f.vii., an allegation of manipulation could include significant variations in the level of expenses associated with any category of costs, where no reasonable explanation has been provided. Certainly, the allegation made by Staff is patterned

on the inclusive statement set forth in Section 3.f.vii. of the EARP Stipulation and Agreement.

Staff has alleged that there has been a significant variation in the level of expenses associated with injuries and damages. AmerenUE noted that it is required under GAAP to recognize liabilities for lost contingencies that are “probable” and “reasonably estimable.” AmerenUE stated that the company’s injuries and damages reserve represents management’s best estimate of the ultimate amount necessary to settle all claims or damages that arise from events that occur prior to the balance sheet date. AmerenUE explained that the injuries and damages reserve amounts were determined by examining the actual expenses for the period and the estimated amount necessary to settle current claims. AmerenUE noted that for the fiscal year 1995, the injuries and damages expense was \$11,100,000, and that the following year, fiscal year 1996, the injuries and damages expense dropped to \$5,950,000. AmerenUE noted that such fluctuations in expense amounts is natural and that the same accounting procedure is applied when the expense amounts decrease as when they increase.

H. Interest

After three years under this EARP, it is noted that credits were due to be shared with the customers. One of the major failures of this EARP is that significant time was required for litigation of the issue of whether or not Staff or Public Counsel could even ask the Commission to review issues that caused Staff or Public Counsel significant concern. While the parties argued their issues to the Commission, AmerenUE chose to hold all uncontested funds subject to credit sharing as leverage. The EARP should have a provision that deals with the distribution of uncontested funds. There are no provisions for the accrual of interest and the intervenor who proposed the assessment of interest cited no authority that would permit the Commission to do so.

IV. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission has reviewed and considered all of the evidence and arguments presented by the various parties and intervenors. Because of the volume of material presented to the Commission, some evidence and positions on certain issues may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or the position of a party indicates that, while the evidence or position was considered, it was not found to be necessary to the resolution of the issue.

Stipulation and Agreement

1. The Commission finds that the Commission should consider each proposed adjustment in dispute individually to determine if the adjustment is permissible under the terms of the Stipulation and Agreement, and if the proposed adjustment is permissible, the Commission shall consider the proposed adjustment substantively.

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Territorial Agreements

2. The Commission finds that Sections 3.f.vii. and 3.f.viii. of the Stipulation and Agreement in Case No. ER-95-411 permit the Commission to consider the Staff's proposed adjustments regarding the territorial agreements in Case Nos. EO-95-400, EA-95-416 and EM-96-6 and in Case Nos. EO-97-6, EA-97-55 and EM-97-61, because Staff reserved the right to bring issues which are related to the operation or implementation of the EARP to the Commission for resolution and these are a new category of costs which have not been included previously in any ratemaking proceeding.

3. The Commission finds that, in Case Nos. EO-95-400, EA-95-416 and EM-96-6, the Commission approved the territorial agreements pursuant to Section 394.312, RSMo (1994), but that the Commission made no rate determination regarding net revenues associated with this territorial agreement.

4. The Commission finds that, in Case Nos. EO-97-6, EA-97-55 and EM-97-61, the Commission approved the territorial agreements pursuant to Section 394.312, RSMo (1994), but that the Commission made no rate determination regarding net revenues associated with this territorial agreement.

5. The Commission finds that, in Case Nos. EO-97-6, EA-97-55 and EM-97-61, the Commission approved the stipulation and agreement entered into by the parties wherein AmerenUE specifically agreed that Staff has the right to re-examine the financial impacts of the territorial agreement as part of the annual sharing credits for UE's current EARP approved by the Commission on July 21, 1995 and that adjustments to book earnings, based on more current data, could be proposed at that time, if necessary. The Commission also finds that even though there was no similar express order concerning Black River territorial agreements in Case No. EO-95-400, based upon Section 3.f.viii., the Commission can make this adjustment for both territorial agreements.

6. The Commission finds that in Case Nos. EO-95-400, EA-95-416 and EM-96-6, AmerenUE had initially experienced a loss of nearly 6,000,000 kWh of load and the loss of more than \$400,000 in revenues as a result of the exchange of territory.

7. The Commission finds that, in Case Nos. EO-97-6, EA-97-55 and EM-97-61, the territorial exchange between AmerenUE and Macon Cooperative resulted in a net loss of approximately 2,200 customers for AmerenUE and that the territorial exchange was expected to result in the loss of approximately \$2,000,000 in revenues by AmerenUE.

8. The Commission finds that since there had been no substantial change or customer growth in the specific customer areas included in the territorial exchanges approved by the Commission in Case Nos. EO-95-400, EA-95-416 and EM-96-6 and in Case Nos. EO-97-6, EA-97-55 and EM-97-61, adjustments for the short-term loss should be made as proposed by Staff to avoid a detriment to the ratepayers in the credit sharing and rate reduction as a result of the Commission's approval of the territorial agreements.

Year 2000 (Y2K) Costs

9. The Commission finds that Year 2000 (Y2K) costs have never been presented to the Commission in a ratemaking proceeding for recovery by AmerenUE prior to this proceeding, and may be considered by the Commission pursuant to paragraph 3.f.viii. of the Stipulation and Agreement in Case No. ER-95-411.

10. The Commission finds that AmerenUE's Year 2000 costs shall not be expensed as part of AmerenUE's Final Earnings Report and Credit Sharing Report because of the unusual and non-recurring nature of these costs.

11. The Commission finds it is premature to deal with the costs related to Y2K until the goal of avoiding any interruption to utility service to Missouri's ratepayers has been accomplished.

12. The Commission finds that AmerenUE's Year 2000 costs shall be deferred until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined.

Other Computer Costs

13. The Commission finds that the proposed adjustments referred to as "Other Computer Costs" are issues which the parties cannot resolve and which relate to the operation or implementation of the plan, and may be considered by the Commission pursuant to paragraph 3.f.vii. of the Stipulation and Agreement in Case No. ER-95-411.

14. The Commission finds that even though the Commission is not bound by Uniform Statement of Accounts (USOA) or the recommendations of the American Institute of Certified Public Accountants (AICPA) or the Financial Accounting Standards Board (FASB), Staff and Public Counsel failed to provide sufficient evidence that those costs referred to as "Other Computer Costs" are more appropriately capitalized and amortized than expensed as permitted until this third year sharing period. The Commission shall deny Staff and Public Counsel's request to direct AmerenUE to capitalize and amortize the costs referred to as "Other Computer Costs" relating to the CSS, EMPRV and AMRAPs computer programs for the third year sharing period of the EARP.

15. The Commission finds that AmerenUE shall be required to comply with the AICPA's Statement of Position 98-1 as it relates to additional costs associated with the CSS, EMPRV, AMRAPs computer programs and any other qualifying computer costs reported in all financial statements for fiscal years beginning after December 15, 1998. The Commission also finds that it is not necessary for AmerenUE to be ordered to comply with the SOP 98-1. However, because AmerenUE requested the Commission's order and did not oppose compliance with SOP 98-1, the Commission shall order AmerenUE to comply with SOP 98-1 until AICPA rescinds or amends its Statement of Position or until the Company can justify application of another accounting procedure.

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Merger & Acquisition Costs

16. The Commission finds that the proposed adjustment referred to as “Merger and Acquisition Costs” is an issue which the parties cannot resolve, and which relate to the operation or implementation of the plan, including disagreements as to the mechanics of calculating the monitoring report. Therefore, the proposed adjustment may be considered by the Commission pursuant to paragraph 3.f.vii. of the Stipulation and Agreement in Case No. ER-95-411.

17. The Commission finds that interpretation given by Staff and Public Counsel of Section 4., Transaction and Transition Costs of the Stipulation and Agreement, in Case No. EM-96-149 is the appropriate interpretation of the calculation of the Transaction and Transition Costs to be reported as part of AmerenUE’s Final Earning Report for the third year sharing period for the EARP.

AmerenUE’s argument ignores the fact that the first part of the second sentence in paragraph four of the Stipulation and Agreement regarding transactional and transitional costs begins “The annual amortization of merger transaction and transition costs...” The prior sentence refers to the ten-year period of amortization agreed upon by the parties. The amount \$7.2 million in the first optional paragraph had already been amortized, but it was necessary to complete the calculation by determining the Missouri jurisdictional portion of that amortized amount. For the second paragraph, the parties would have to take the annual amortization of the Missouri jurisdictional portion of the actual costs incurred to date. This is the only reasonable reading of paragraph four in the Stipulation and Agreement as approved by the Commission in Case No. EM-96-149. AmerenUE’s interpretation would render the calculations unnecessary because the amortized amount in the estimated section would always be lesser than an unamortized amount of the actual costs.

18. The Commission finds that the appropriate amount to be included in the earnings report as Merger and Acquisition Costs is the Missouri Jurisdictional Portion (86.13%) of the total Ameren actual amount of merger transaction and transaction costs divided by 10 years, and then divided by 2 to reflect the 6 months of third year sharing period for which the merger was in effect. The amount calculated by Staff and Public Counsel was approximately \$2,869,031, deducted from the \$3,100,656 amount which AmerenUE had included in its proposed earnings report for the third year of the EARP, which should result in the decrease in expenses for AmerenUE by approximately \$231,623.

Decommissioning Fund Deposits

19. The Commission finds that the issue of interest earned by AmerenUE as a result of the delay in making required quarterly Decommissioning Fund Deposits is a category of costs which has never been presented to the Commission in a ratemaking proceeding for recovery prior to this proceeding, and may be considered by the Commission pursuant to paragraph 3.f.viii. of the Stipulation and Agreement in Case No. ER-95-411.

20. The Commission finds that the issue of interest earned by AmerenUE as a result of the delay in making required quarterly Decommissioning Fund Deposits is an issue which the parties cannot resolve and which relates to the operation or implementation of the plan, and may be considered by the Commission pursuant to paragraph 3.f.vii. of the Stipulation and Agreement in Case No. ER-95-411.

21. The Commission finds that AmerenUE did receive a benefit during the third sharing period from collecting the funds in billing for the decommissioning fund deposits but not making the four quarterly deposits due in March 1997, June 1997, September 1997, and December 1997.

22. The Commission finds that AmerenUE could not make the decommissioning fund quarterly deposits due in March 1997, June 1997, September 1997, and December 1997 until the requirements of the Internal Revenue Code had been met.

23. The Commission finds that AmerenUE shall account for additional revenues earned by booking the interest revenues AmerenUE earned while holding the decommissioning funds as "Other Income and Deductions" which includes booking of revenues associated with non-operating accounts or as Interest and Dividend Income as recommended by the USOA.

24. The Commission finds that AmerenUE shall use the procedure for calculating the interest on all four decommissioning fund payments due, for interest accruing during the third year sharing period, as set forth in Staff's testimony. AmerenUE shall use the weighted average short-term borrowing rate, which ranged between 5 percent and 6 percent during the third sharing period, as the interest rate on the decommissioning fund payments held by AmerenUE until March 1998. If there is no other acceptable method of determining the weighted, average short-term borrowing rate for the third year sharing period, the average 5.5 percent shall be used.

25. The Commission finds that there is insufficient evidence to show that AmerenUE should be ordered to pay interest on the decommissioning fund deposit payment due March 1998, where the deposit was due by April 25, 1998 but was not paid until May 27, 1998. If late payment of decommissioning fund deposits is a regular problem apart from the unusual circumstances that occurred in 1997, a party to the original order should request enforcement or modification to include regularly calculated interest. Until then, the Commission will not order interest payments except in very unusual circumstances.

Injuries & Damages

26. The Commission finds that there was a significant variation in the level of expenses associated with the Injuries and Damages Expenses for the third year sharing period of the EARP.

27. The Commission finds that there was a reasonable explanation for the significant variation associated with the Injuries and Damages Expenses for the third year sharing period of the EARP, and no adjustment is necessary to the Injuries and Damages expense.

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V. Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Union Electric Company d/b/a AmerenUE is a public utility under the jurisdiction of the Commission. The Commission has jurisdiction over AmerenUE and its operations under the provisions of 386, 393 and 394, RSMo, (1994, as amended Cum. Supp. 1998). Pursuant to its statutory authority, the Commission must ensure that AmerenUE's rates are just and reasonable and that AmerenUE provides safe and adequate service. The Commission has reviewed and applied the terms of the Stipulation and Agreement approved the Commission in Case No. ER-95-411 and EM-96-149 in light of this responsibility in addition to its general responsibility to protect the public interest.

VI. Compliance with Section 3.g. of Case No. ER-95-411 Stipulation and Agreement

In Section 3. g. of the Stipulation and Agreement approved in Case No. ER-95-411, the parties agreed as follows:

In the final year of the Plan, UE, Staff, OPC and other signatories to the Stipulation and Agreement shall meet to review the monitoring reports and additional information required to be provided. By February 1, 1998, UE, Staff and OPC will file and other signatories may file their recommendations with the Commission as to whether the Plan should be continued as is, continue with changes (including new rates, if recommended) or discontinued. Copies of their recommendations shall be served on all parties to UE's Plan Docket.

The Commission received no memoranda, therefore, the Commission directs the parties to file their memoranda with recommendations in compliance with Section 3.g. of the Stipulation and Agreement approved in Case No. ER-95-411, or other comments, within 30 days of the effective date of this Report and Order.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibits 29, 31, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 are admitted into evidence.
2. That Union Electric Company d/b/a AmerenUE shall make adjustments as proposed by Staff to the Proposed Final Earning Report and Credit Sharing Proposal to avoid a detriment to the ratepayers in the credit sharing and rate reduction as a result of the Commission's approval of the territorial agreements in Case Nos. EO-95-400, EA-95-416 and EM-96-6 and in Case Nos. EO-97-6, EA-97-55 and EM-97-61.
3. That Union Electric Company d/b/a AmerenUE shall not expense Year 2000 costs as part of AmerenUE's Final Earnings Report and Credit Sharing Report for the third year sharing period of the Experimental Alternative Regulatory Plan approved in Case No. ER-95-411.

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4. That Union Electric Company d/b/a AmerenUE shall defer Year 2000 costs until the project is complete and the prudence of UE's expenditures as well as the appropriate method of recovery can be determined.

5. That Union Electric Company d/b/a AmerenUE shall comply with the AICPA's Statement of Position 98-1 as it relates to costs associated with the CSS, EMPRV, AMRAPs computer programs and any other qualifying computer costs reported in all financial statements for fiscal years beginning after December 15, 1998. AmerenUE shall comply with SOP 98-1 until AICPA rescinds or amends its Statement of Position or until the Company can justify application of another accounting procedure.

6. That Union Electric Company d/b/a AmerenUE shall adjust its proposed earnings report for the third year of the EARP by decreasing the Merger and Acquisition Costs by the amount recommended by Staff of the Commission, approximately \$231,623.

7. That Union Electric Company d/b/a AmerenUE shall account for additional revenues earned by booking the interest revenues earned while holding the decommissioning funds as "Other Income and Deductions" which includes booking of revenues associated with non-operating accounts or as Interest and Dividend Income as recommended by the USOA, using the procedure for calculating the interest on all four decommissioning fund payments due, for interest accruing during the third year sharing period beginning July 1, 1997, as proposed by Staff. The interest used in calculating the interest on the decommissioning fund payments held by AmerenUE until March 1998 shall be the weighted average short-term borrowing rate, which ranged between 5 percent and 6 percent during the third sharing period. If there is no other acceptable method of determining the weighted, average short-term borrowing rate for the third year sharing period, the average 5.5 percent shall be used.

8. The Commission directs the parties to file their memoranda with recommendations in compliance with Section 3.g. of the Stipulation and Agreement in Case No. ER-95-411 no later than 3 p.m. on February 3, 2000.

9. That all objections not specifically ruled upon are overruled and all motions not specifically ruled upon are denied.

10. That Union Electric Company d/b/a AmerenUE file its Corrected Final Earnings Report and Third Year Credit Sharing Report reflecting the changes ordered in this Report and Order no later than 3 p.m. on January 14, 2000. As part of the Third Year Credit Sharing Report, Union Electric Company d/b/a AmerenUE shall inform the Commission of the next available date on which the sharing credits may be issued.

11. That this order shall become effective on January 4, 2000.

Lumpe, Ch., Crumpton, Schemenauer, and Drainer, CC., concur; Murray, C., concurs with concurring opinion to follow, and certify compliance with the provisions of Section 536.080, RSMo 1994.

Register, Regulatory Law Judge

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CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

I concur in the final adjustment required by the Report and Order, but my reasoning for finding in favor of UE on the issue of injuries and damages differs from that expressed therein. Additionally, I do not think the record supports inclusion of the section in the Report and Order related to compliance with Section 3.g. of Case No. ER-95-411 Stipulation and Agreement.

My reasoning concerning the issue of injuries and damages is that the proposed adjustment fails the threshold question regarding whether the adjustment is permissible under the EARP Stipulation and Agreement. While I agree with the substantive finding that there was a reasonable explanation for the significant increase in the level of expenses in this category, I do not think it was appropriate for the Commission to reach the substantive arguments because the threshold issue was not satisfied. Staff failed to identify a provision of the EARP Stipulation and Agreement which gives legitimacy to consideration of the adjustment Staff proposed. Therefore, it would have been proper for the Commission to deny the adjustment on that basis rather than confuse the record with the substantive discussion of manipulation.

**In the Matter of the Application of Union Electric Company for
Approval of an Experimental Retail Wheeling Pilot.**

*Case No. EO-98-95
Decided December 23, 1999*

Electric §24. Where AmerenUE had previously agreed to file with the Commission an experimental retail wheeling pilot program for 100 MW of electric power, but later sought to be relieved of this obligation on the grounds that it would entail significant expense while yielding only information now available elsewhere, the Commission would grant AmerenUE's request.

ORDER CLOSING CASE

In the Stipulation and Agreement approved by the Commission in Case No. EM-96-149, Union Electric Company, now doing business as AmerenUE (UE), agreed to file with the Commission an experimental retail wheeling pilot program for 100 MW of electric power. On September 2, 1997, UE filed its application for approval of the experimental retail wheeling pilot program. Interventions were granted by Commission order on November 18, 1997, January 29, 1998, and August 4, 1998. On March 18, 1999, the Commission directed that UE file a case status report no later than April 19, 1999.

UE filed its Case Status Report on April 19, 1999, as directed. In that report, UE moved the Commission to close this case. In support of this request, UE asserted

that certain events that occurred after the opening of this case have rendered it unnecessary. UE points out that the Commission and the Missouri General Assembly have each “undertaken substantial investigations designed to identify issues associated with electric restructuring.” Both the Commission and the General Assembly issued reports of their investigations which “provided opportunities for parties to discuss relevant issues far beyond what could have been obtained from a retail pilot.” In addition, several states, including Illinois, have restructured their electric industries, resulting in practical experience “likely to be significantly more reliable than that which could be generated through a retail pilot.” Finally, UE asserts that the pilot program would impose “significant costs and complexity” on UE, the Commission, the Staff of the Commission, and on other participants, in return for “little useful information.”

This matter arose from the stipulation and agreement in Case No. EM-96-149, in which UE agreed to seek substantive input from interested parties and file a proposed experimental retail wheeling pilot plan with the Commission by September 1999. UE contends that it has discharged those obligations.

UE further notes that in January 1999, the Joint Interim Committee on Telecommunications and Energy published its report, following extensive hearings in 1997 and 1998, in which it stated that “pilot programs have limited value because they are generally too brief and too limited in scope to offer genuine insights into how competition will develop in full scale restructuring.” UE further notes that the Commission’s Retail Electric Competition Task Force, Case No. EW-97-245, filed its report in May 1998. That document “delineates key issues, options and makes many specific recommendations that should help the restructuring debate.” UE suggests that the information contained in these reports makes implementation of its pilot program unnecessary.

UE also contends that implementation would be unduly expensive, particularly in view of the limited usefulness of pilots. UE states that administrative costs alone are likely to be as much as \$1,000,000 per month during the life of the pilot. Additional resources will be necessary to identify eligible consumers, develop and provide consumer education, and set up billing procedures. UE states that the pilot could not be implemented prior to the summer of 2000. UE further states that, in view of the fact that actual restructuring is occurring in high cost states such as Illinois, significant competitors are not likely to invest resources in a small-scale pilot in a low cost state such as Missouri.

The Commission has considered UE’s status report and motion to close this case. The Commission notes that no party has responded in opposition to UE’s motion or filed any pleading requesting that the pilot plan be implemented. The Commission concludes that implementation of the pilot program would not be in the public interest in that the expected results would not justify the costs involved. Therefore, the Commission will close this case.

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IT IS THEREFORE ORDERED:

1. That the motion to close case filed by the Union Electric Company, doing business as AmerenUE, is granted.
2. That this order shall become effective on January 4, 2000.
3. That this case may be closed on January 5, 2000.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

Application of Union Electric Company d/b/a AmerenUE for Approval of Decommissioning Cost Estimate and Funding Level of Nuclear Decommissioning Trust Fund

Case No. EO-00-205
Decided January 4, 2000

Electric §36. The Commission approved an agreement that provided that AmerenUE would continue its Missouri retail jurisdiction expense accruals and trust fund payments for decommissioning of the Callaway nuclear power plant at current levels without any change in its Missouri retail jurisdictional rates and that annual decommissioning costs in the amount of \$6,214,184 are, and should continue to be, included in AmerenUE's cost of service and reflected in its current rates for ratemaking purposes.

ORDER APPROVING STIPULATION AND AGREEMENT

On September 1, 1999, Union Electric Company d/b/a AmerenUE (AmerenUE) filed an application requesting that the Commission: A) approve its decommissioning cost estimate; B) approve the funding level at the current level; and C) find that decommissioning costs in the amount of \$509,451,856 are included in its current cost of service for ratemaking purposes¹.

The Commission issued notice of the application, and allowed interested entities the opportunity to intervene. Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an oral hearing is not necessary and AmerenUE may submit evidence in support of its application by verified statement. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

¹ Although the title of AmerenUE's pleading is "Application and Request for Expedited Treatment and Contingent Request for Waiver," AmerenUE does not request expedited treatment, nor is there a request (contingent or otherwise) for any waiver.

On November 2, 1999, AmerenUE filed a pleading entitled "Motion to Provide Additional Notice." AmerenUE stated that it had agreed, in a stipulation filed in Case No. EM-96-149, that all signatories to that stipulation would be notified of AmerenUE's filing of its application in this case. AmerenUE requested that the Commission provide notice to those signatories. However, as noted below, all signatories have been notified, and the Commission will deny the motion².

The Office of the Public Counsel, Staff, and AmerenUE (the parties) filed a unanimous stipulation and agreement on November 30, 1999. The parties agree that AmerenUE shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates. The parties further agree that annual decommissioning costs in the amount of \$6,214,184 are, and should continue to be, included in AmerenUE's cost of service and reflected in its current rates for ratemaking purposes. The parties also agree that all signatories to the Stipulation and Agreement in Case No. EM-96-149 have been notified of AmerenUE's filing of its 1999 decommissioning cost case.

On December 1, 1999, Staff filed the testimony of David Broadwater in support of the stipulation. Mr. Broadwater testified that Staff and AmerenUE have agreed to an amount of decommissioning expense of approximately \$509 million in 1999 dollars, and have also agreed upon the annual funding level. Mr. Broadwater reviewed AmerenUE's decommissioning options, and explained the current status of the fund. Mr. Broadwater also testified that Staff intends to review the earnings and the level of decommissioning funding at the end of AmerenUE's experimental alternative regulation plan.

The Commission has considered the verified application, the unanimous stipulation and agreement, and the testimony of David Broadwater. The Commission finds that the parties' estimate of \$509,451,856 in 1999 dollars to immediately decommission Callaway upon the expiration of its forty year license is reasonable. The Commission also finds that AmerenUE's currently effective rates include an annual amount of \$6,214,184 for decommissioning expense.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on November 30, 1999, is approved.
2. That Union Electric Company d/b/a AmerenUE's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,214,184.
3. That the motion for additional notice filed on November 2, 1999, is denied.

² It is unclear why AmerenUE requested that the Commission provide notice, instead of simply providing notice itself.

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4. That AmerenUE or its trustee shall file on a prospective basis in Case No. EO-2000-205 one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6).

5. That this order shall become effective January 14, 2000.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Mills, Deputy Chief Regulatory Law Judge

Editor's Note: The Stipulation and Agreement in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

GST Steel Company, Complainant, v. Kansas City Power & Light Company, Respondent.

Case No. EC-99-553
Decided January 6, 2000

Electric §9. Where an electric utility filed pleadings containing erroneous and misleading assertions of fact, upon which the Commission relied in ruling on a motion to compel discovery, the Commission had authority to convene a hearing so the utility might show cause why sanctions ought not be imposed.

ORDER TO SHOW CAUSE

On November 5, 1999, this Commission granted the Second Motion to Compel Discovery filed by Respondent Kansas City Power & Light Company (KCPL) on October 13, 1999. The motion was granted because Complainant GST Steel Company (GST) failed to respond.

Thereafter, on December 1, 1999, GST filed its Motion to Seek Clarification and Reconsideration of Order Regarding Kansas City Power and Light Company's Second Motion to Compel. On December 2, 1999, GST filed a corrected version of this motion. KCPL responded in opposition on December 13, 1999, and GST replied on December 22, 1999.

GST argues in its motion that the Commission should apply the same reasoning to KCPL's Second Motion to Compel that it applied to KCPL's First Motion to Compel, and that GST should not be required to make discovery under KCPL's Second Motion in areas found by the Commission to be irrelevant with respect to KCPL's First Motion. The Commission finds GST's argument to be without merit. Having made no response to KCPL's Second Motion to Compel, GST waived all objections to the Data Requests (DRs) in question and must now answer those requests.

Much more troubling is KCPL's allegation, contained in its response of December 13, 1999, that GST is not itself a legal entity, but merely a fictitious name under which GS Technology Operating Company, Inc. (GSTOC), does business in Kansas City, Missouri, and that "[t]he real party in this proceeding has always been GSTOC." In its reply of December 22, 1999, in response to this allegation, GST stated:

As to the requests directed toward GSTOC, KCPL notes that GST Steel Company is a division of GSTOC, and that GST Steel Company is a registered name on file with the Missouri Secretary of State for the entity that does business in Kansas City, Missouri, and that is served by KCPL. This observation, however, fails to make a point. As the Commission stated in its November 2 Order, GST Steel Company is the KCPL customer and the party in this docket.

It is GST that has missed the point. In the first numbered paragraph of GST's Complaint, filed on May 11, 1999, GST asserts: "GST is a corporation duly authorized to conduct business in the State of Missouri[.]" Now, it is seen that this allegation is simply not true. In fact, GST is not a corporation at all, it is merely a fictitious name under which GSTOC does business. One of the grounds relied on by the Commission in its Order of November 2, 1999, sustaining many of GST's objections to KCPL's First Motion to Compel, was a belief that GST and GSTOC are distinct legal entities. That belief, founded squarely upon the allegation at paragraph 1 of GST's Complaint referred to above, is now shown to be mistaken.

To the extent that the Commission's Order of November 2, 1999, sustained GST's objections to KCPL's First Motion to Compel on the basis of GST's false assertion of corporate identity distinct from GSTOC, that Order must be set aside. The Commission has reviewed the DRs contained in KCPL's First Set of Discovery propounded to GST and has identified six DRs directed to GSTOC to which objections were improperly sustained, based on the misleading information provided to this Commission by GST: DRs 21, 27, 35, 39, 43, and 49.

The circumstances described in this Order necessarily raise serious and perplexing questions. Did GST's Complaint of May 11, 1999, brought in the name of a nonexistent corporate entity, confer jurisdiction on the Commission? What sanctions, if any, ought the Commission to impose on GST and its counsel for falsely alleging that GST is a corporation and standing by silently when the Commission, relying on GST's false allegation, wrongly sustained GST's objections to KCPL's discovery against GSTOC? Missouri Supreme Court Rule 4-3.3 includes a duty of candor toward the tribunal which is implicated here.

To consider these questions, the Commission will convene a show cause hearing on January 18, 2000, at 1:30 p.m., a date already set aside for a prehearing conference in this matter. GST and its counsel shall appear and show cause why this matter ought not be dismissed, or why a complaint or report ought not be made to the Office of the Chief Disciplinary Counsel, or why some other appropriate sanction ought not be

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imposed on GST, or on its counsel of record, or both. It is expected that every attorney who has entered an appearance for GST will appear personally. Counsel for every other party to this matter shall appear at the above-stated date and time and shall be prepared to advise the Commission on these matters.

The Commission is authorized to impose appropriate sanctions for discovery violations. The Missouri Court of Appeals, Western District, has stated, "This court holds the PSC may impose sanctions pursuant to Rule 61.01." *State ex rel. Arkansas Power & Light Co. v. Missouri Public Service Commission*, 736 S.W.2d 457, 460 (1987). Missouri courts have generally recognized this authority in administrative tribunals: "The [Administrative Hearing] Commissioner, like a trial judge, has discretion in deciding whether to impose sanctions for failure to comply with his orders for discovery." *Mueller v. Ruddy*, 617 S.W.2d 466, 478 (Mo. App., E.D. 1981).

The Western District found the Commission's authority to impose sanctions in the Commission's rules of procedure, adopted pursuant to Section 386.410.1, RSMo. The Commission's rules provide that discovery abuses will be subject to the same sanctions "provided for in the rules of civil procedure." Rule 4 CSR 240-2.090(1). Rule 61.01, Mo. R. Civ. Pro., provides for discovery sanctions. The sanctions available vary depending on the discovery device in question. For a failure to timely answer interrogatories, the Commission may issue "An order striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or render a judgment by default against the disobedient party." Rule 61.01(b)(1), Mo. R. Civ. Pro. The Commission has great flexibility in designing a sanction for a failure to respond to a production request:

If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely files objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

(1) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence.

(2) An order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or, rendering a judgment by default against the disobedient party.

(3) An order treating as a contempt of court the failure to obey.

(4) An order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule 61.01(d), Mo. R. Civ. Pro.

The discovery device at issue here is the data request. Data requests are unknown in the rules of civil procedure and are created by the Commission's procedural rules at 4 CSR 240-2.090(2). That rule specifies that "[s]anctions for failure to answer data requests shall be the same as those provided for abuse of the discovery process in section (1) of this rule." Section (1) of Rule 4 CSR 240-2.090, in turn, refers to the discovery sanctions "provided for in the rules of civil procedure."

Unlike the Arkansas Power & Light case, *supra*, the present matter does appear to involve "bad faith, willfulness or contumacious conduct[.]" Consequently, the Commission's "wide discretion in meting out sanctions under Rule 61.01," 736 S.W.2d at 460, extends to dismissal of the case or similar severe sanctions.

IT IS THEREFORE ORDERED:

1. That the motion for clarification and reconsideration filed by GS Technology Operating Company, Inc., doing business as GST Steel Company, on December 1 and 2, 1999, is denied. As previously ordered, GS Technology Operating Company, Inc., doing business as GST Steel Company, must provide information and documents as requested in the Data Requests contained in Kansas City Power & Light Company's Second Set of Discovery.

2. That the Commission's Order of November 2, 1999, relating to Kansas City Power & Light Company's First Set of Discovery Propounded to GST Steel Company, is set aside in that GS Technology Operating Company, Inc., doing business as GST Steel Company, must provide the information and documents requested in Data Requests 21, 27, 35, 39, 43, and 49, on or before January 13, 2000.

3. That the Commission shall convene a show cause hearing in this matter on Tuesday, January 18, 2000, commencing at 1:30 p.m.

4. That GS Technology Operating Company, Inc., doing business as GST Steel Company, and its counsel shall appear and show cause, if any they have, why an appropriate sanction ought not be imposed on GS Technology Operating Company, Inc., doing business as GST Steel Company, or on its counsel of record, or both, on the date and time stated in Ordered Paragraph 3, above. Each counsel for every other party to this matter shall appear at that date and time and shall be prepared to advise the Commission on these matters.

5. That the hearing will be held on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any person with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline — 1-800-392-4211, or TDD Hotline — 1-800-829-7541.

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6. Any party desiring to tender written suggestions with respect to these matters shall file the same no later than 3:00 p.m. on Thursday, January 13, 2000.

7. That the prehearing conference previously scheduled for January 18, 2000, at 10:00 a.m., shall be held as scheduled.

8. That the procedural schedule previously adopted in this matter is suspended, except as otherwise specified herein, pending the outcome of the show cause hearing on January 18, 2000.

9. That this order shall become effective on January 12, 2000.

Lumpe, Ch., Crumpton, Drainer, and Murray, CC., concur.

Schemenauer, C., absent.

Thompson, Deputy Chief Regulatory Law Judge

**In the Matter of the Application of Union Electric Company, d/b/a
AmerenUE, for Approval of the Transfer of Generating Assets
by an Affiliate to Another Affiliate.**

Case No. EA-00-37

Decided January 13, 2000

Electric §9. Where Union Electric's Illinois affiliate, AmerenCIPS, proposed to transfer its assets to a new entity, Genco, which would be an Exempt Wholesale Generator, and Ameren Corporation was a registered holding company which owned both Union Electric, a public utility subject to regulation by this Commission, and AmerenCIPS, and Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA), codified at 15 U.S.C. 79z-5a(c), provides that, in the case of "an affiliate of a registered holding company," a "determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company," that "allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law," the Commission determined that, so long as certain conditions suggested by its Staff were imposed, that the transaction would benefit consumers, was in the public interest, and would not violate any law of Missouri, and should therefore be approved.

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT,
MAKING FINDINGS UNDER THE PUBLIC UTILITIES HOLDING
COMPANY ACT, AND CLOSING CASE**

Procedural History:

On July 21, 1999, Union Electric Company, doing business as AmerenUE (UE), filed its application for findings by the Commission under 15 U.S.C. § 79z-5a(c), the

Public Utilities Holding Company Act (PUHCA), relating to Exempt Wholesale Generators (EWGs). UE seeks these findings in connection with a proposed restructuring of its Illinois-based affiliate, AmerenCIPS. According to UE's application, that restructuring proposes the transfer of all generating assets currently owned by AmerenCIPS, and associated liabilities, to a new affiliate to be known as Genco. Genco will be designated as an EWG. UE asserts that all of the generating assets involved are located in Illinois and none are located in Missouri.

On July 26, 1999, the Commission issued its Order Directing Notice, setting an intervention deadline of August 16, 1999. On July 27, 1999, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to respond by July 30, 1999, and state the earliest date by which it believed it would be able to recommend whether or not UE's application should be granted. On July 30, 1999, Staff responded.

On September 20, 1999, a prehearing conference was held in this matter. Thereafter, on September 23, 1999, the Staff of the Missouri Public Service Commission on behalf of all the parties filed a proposed procedural schedule, which the Commission adopted on September 27, 1999. The procedural schedule required UE to file its Direct Testimony on or before October 4, 1999. Instead, UE filed a request for an extension of time to October 11, 1999, stating that the parties were close to settlement. The Commission granted the requested extension by Order on October 5, 1999. On October 8, 1999, UE filed its second request for an extension of time, to October 18, 1999. The Commission granted the second requested extension, and modified the procedural schedule, on October 12, 1999.

Also on October 8, 1999, the Missouri Industrial Energy Consumers (MIEC) filed their Application to Intervene Out of Time. On October 14, 1999, UE filed its Objection to MIEC's Application, together with its Notice of Settlement, stating that settlement had been reached on all issues and that a stipulation and agreement would be filed "in the near future." The Commission consequently denied MIEC's Application to Intervene on October 21, 1999.

On November 3, 1999, the parties filed their Unanimous Stipulation and Agreement. The Commission promptly suspended the procedural schedule by Order on November 5, 1999. Thereafter, the Commission took no action, awaiting Staff's suggestions in support of the Unanimous Stipulation and Agreement. Staff's suggestions were finally filed on December 21, 1999.

Discussion:

1. The Commission's Role in this Case:

In connection with the ongoing restructuring of the electrical energy industry in Illinois, UE's Illinois affiliate, AmerenCIPS, proposes to transfer its assets to a new entity, Genco, which will be an EWG. Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA), codified at 15 U.S.C. 79z-5a(c), provides that, in the case of "an affiliate of a registered holding company," a "determination with respect to the facility in question shall be required from every State commission having

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jurisdiction over the retail rates and charges of the affiliates of such registered holding company,” that “allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law[.]” Ameren Corporation is a registered holding company which owns both UE, a public utility subject to regulation by this Commission, and AmerenCIPS. Consequently, the PUHCA requires the designated determinations by this Commission if the proposed transaction is to go forward.

2. UE’s Position:

UE argues that the proposed transaction is in the public interest, and will benefit consumers, in three respects. First, UE argues that it will make significant additional generating capacity available to UE’s customers without adding corresponding construction costs to the rate base, pursuant to the Joint Dispatch Agreement (JDA). Second, UE argues that several millions of dollars in fuel costs will be avoided because Genco will serve certain wholesale customers now served by UE. Third, UE argues that several more millions of dollars will be saved by deferral of construction of a new generation of UE generating plants. UE also asserts that nothing in state law prohibits the proposed transaction.

3. The Unanimous Stipulation and Agreement:

In the Unanimous Stipulation and Agreement (S&A), filed on November 3, 1999, UE, Staff and the Office of the Public Counsel (Public Counsel) recommend that the Commission make the findings requested by UE, subject to certain conditions. In the event that the Commission approves the S&A, the parties waive their rights to cross-examination, oral argument, briefs, the reading of the transcript by the Commission, and judicial review.

The conditions contained in the S&A require UE to seek prior Commission approval of substantive changes to the JDA; to provide certain generation and consumption information to Staff on a monthly basis; to seek agreement from Staff and the Public Counsel regarding the effects on the JDA of UE’s operation of two trading groups; to implement certain standards, and to provide certain reports, with respect to such trading groups; to purchase power from Genco only by competitive bidding; and to provide certain information regarding competitive bidding and the acquisition of additional generating capacity. The S&A also includes provisions dealing with stranded costs and the continuing applicability of the S&A of Case No. EM-96-149.

4. Staff’s Technical Memorandum:

As stated, Staff filed its suggestions on December 21, 1999. It is important to distinguish the two components of Staff’s filing: the suggestions proper, produced by the General Counsel’s Office, will be discussed later. The other component is a lengthy technical memorandum by Michael Proctor, Chief Regulatory Economist of Staff’s Electric Department.

Proctor agrees with UE that the proposed transaction is in the public interest and will benefit consumers and that the Commission should make the requested findings. However, Proctor sees these benefits as an increased operating efficiency of Genco due to separation of regulated and competitive functions, which will inure to the benefit of Missouri consumers through the JDA. Another benefit, Proctor states, is a decreased potential for market power abuse. The three benefits asserted by UE, in Proctor's view, have nothing to do with the proposal to transfer AmerenCIPS' generating assets to Genco and designate it as an EWG. The benefits asserted by UE, rather, derive entirely from the proposal to serve UE's retail load growth with existing facilities. Proctor notes that UE can implement this proposal whether or not the AmerenCIPS-Genco proposal is implemented. The two proposals are really independent and unrelated in Proctor's view.

Proctor states that the proposed transaction may affect Missouri consumers in two ways. First, the JDA was created as part of the merger of UE and Central Illinois Public Service Company (CIPS), Case No. EM-96-149, in order to equitably share the benefits of low cost power generation through the joint dispatch of the generation of the two systems. Under the proposed transaction, Genco will replace AmerenCIPS in the JDA and undertake its responsibilities and obligations. Second, under the proposed transaction, UE will no longer serve certain wholesale customers in Missouri, and Genco will bid for these customers on a deregulated basis. These wholesale customers include Citizens Electric Cooperative and the cities of Rolla, Farmington, Fredericktown, and Owensville. Finally, Proctor notes that it is proposed that Genco will own eight new combustion turbines originally planned for UE. UE intends to serve its retail load growth through the capacity formerly devoted to wholesale customers rather than through this new construction.

UE asserts that the proposed transaction will result in savings of several millions of dollars to Missouri ratepayers in the form of fuel cost savings and avoided new construction costs. Proctor agrees with UE that the proposed transaction will result in fuel cost savings for Missouri consumers because UE's existing facilities are less expensive in that regard than the new combustion turbines that will be assigned to Genco. Proctor also agrees with UE's claim that the proposed transaction will result in additional savings for Missouri consumers by avoiding the construction of new facilities (based on a comparison of \$322/kW embedded costs for existing facilities to \$390/kW embedded costs for new facilities); however, he does not believe that these savings will be as great as UE projects. Proctor notes that UE also failed to reduce its estimated savings by the additional Operation and Maintenance (O&M) costs necessarily consequent upon using existing generating facilities (\$27/kW/year) as opposed to new combustion facilities (\$4/kW/year). Proctor calculates the result of adding in this figure to be a reduction of savings of approximately \$6,000,000 per year.

UE also asserts that the proposed transaction will benefit Missouri ratepayers by giving them access to a larger generation pool, thus reducing purchased power costs from peak demand capacity shortfalls. However, Proctor states that, under the

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proposed transaction, UE will still experience a shortfall in capacity and will need to buy power. Proctor cautions that care must be taken that UE is permitted to buy power from Genco only if Genco is the most cost-effective alternative. Proctor notes that any such purchase agreement will require a further finding by this Commission under PUHCA. See, e.g., Case No. EM-99-369 (April 22, 1999).

Proctor notes that Staff has other concerns. Staff is concerned that the future evolution of the competitive electrical industry in Illinois will require further changes to the JDA. Proctor recommends that the Commission reserve the right to approve any such proposed changes. Proctor further notes that Staff lacks certain information necessary to permit it to determine whether or not UE is complying with the JDA. Proctor recommends that UE be required to furnish this information. Proctor states that UE and its affiliates will likely form a new trading group in addition to the existing trading group and devote one to retail sales and the other to wholesale sales. Proctor insists that Staff and Public Counsel should have a role in defining the interaction of the proposed pair of trading groups to ensure that costs and profits continue to be equitably distributed under the JDA.

Proctor further states that the reallocation of certain existing facilities from wholesale customers to retail customers may result in stranded costs. Proctor insists that any such stranded costs must not be recovered from the retail consumers.

In order to meet the various concerns he identifies, Proctor proposes a number of conditions to be included in the S&A with UE. These conditions are identical to those included in the S&A filed herein, already summarized above.

Finally, Proctor states that he has been advised, by Staff counsel, that the proposed transaction will not violate any law of the state of Missouri.

5. Staff's Suggestions:

Staff notes that this case is the first of its kind to be taken up by the Commission, although a previous case, Case No. EM-99-369, involved similar findings under Section 32(k) of PUHCA. Staff notes that there was no S&A in that case. Staff observes that it is aware of three cases from other states in which commissions made conditioned PUHCA Section 32(c) findings, but Staff does not discuss any of them. Staff states that it provided advance copies of its suggestions to the Public Counsel and to UE. The only suggestion made by Staff is as follows:

Since there is a detailed stipulation and agreement in the instant case, the Staff believes that the Commission need not repeat in its Order all of the conditions in the Unanimous Stipulation and Agreement, but can proceed, as it has in other cases, by adopting the Unanimous Stipulation and Agreement and attaching a copy to its Order.

The Commission will take this opportunity to suggest some useful improvements to the General Counsel's Office with respect to suggestions submitted in support of

stipulations and agreements. It is Staff's practice to submit suggestions in every such case, a practice which the Commission encourages. Suggestions should be concise and should address these questions: What is the legal standard which the Commission must apply in the case at hand? Does the stipulation and agreement meet that standard?

In some cases, an additional legal issue must be addressed. For example, in the present case, the Commission is asked by UE to determine that the proposed transaction does not violate any Missouri law. This question is not addressed in the General Counsel's suggestions. An opinion on this point by the General Counsel's Office would have been useful. Staff also would have assisted the Commission had its suggestions discussed the purpose and effect of the EWG designation sought by UE and its affiliates.

6. Analysis by the Commission:

The Commission has considered the unanimous S&A filed herein, together with the pleadings, Staff's technical memorandum, and Staff's suggestions. Staff's technical memorandum indicates that the benefits to consumers identified by UE in its application are, in fact, to be traced to a part of the proposed transaction that has nothing to do with the determinations which UE seeks in this case. UE has not filed any pleading contesting this opinion. Nonetheless, Staff's technical memorandum concludes that the proposed transaction will result in benefits to Missouri consumers as long as certain conditions are imposed. UE, as well as Staff and the Public Counsel, has agreed to those conditions and they are contained in the unanimous S&A.

Staff's technical memorandum also states that Staff counsel is of the opinion that the proposed transaction does not violate any law of the state of Missouri. The Commission has reviewed Sections 386 and 393, RSMo, and has not found any provision that prohibits the proposed transaction. AmerenCIPS and Genco are not Missouri entities and do not operate in Missouri. The generating assets under consideration are not located in Missouri.

Based on Staff's well-considered technical memorandum and its own review of the law, the Commission will adopt the unanimous S&A of the parties and make the requested determinations.

Findings of Fact:

Based on the Unanimous Stipulation and Agreement filed by the parties herein, as well as on the verified application and Staff's suggestions and technical memorandum, the Commission makes the following findings of fact and conclusions of law.

UE is a public utility and an electrical corporation, within the jurisdiction of this Commission. Section 386.020, RSMo Supp. 1999. UE is a wholly owned subsidiary of Ameren Corporation, a registered holding company. AmerenCIPS is an affiliate of UE. AmerenCIPS proposes to transfer all of its generating assets, located solely in the state of Illinois, to a new entity to be called Genco. Genco will also be an affiliate of UE and Genco will be designated as an Exempt Wholesale Generator (EWG) under

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Section 32 of PUHCA. Genco will succeed to all of the rights and obligations of AmerenCIPS under the Joint Distribution Agreement (JDA) previously approved by this Commission.

Conclusions of Law:

Subject to the conditions contained in the Unanimous Stipulation and Agreement of the parties, a copy of which is attached hereto as Attachment 1, the Commission determines that the proposed transaction will benefit consumers and is therefore in the public interest. The Commission further determines that the proposed transaction does not violate any law of the state of Missouri in that neither AmerenCIPS nor Genco is a Missouri entity, neither of them operates in Missouri, and none of the generating assets concerned are located in Missouri.

IT IS THEREFORE ORDERED:

1. That, in compliance with Section 32(c) of the Public Utility Holding Company Act of 1935, the Commission determines that:

- a) the proposed transaction will benefit consumers;
- b) the proposed transaction is in the public interest; and
- c) the proposed transaction does not violate any Missouri law.

2. That the Commission's approval of the Application of Union Electric Company, doing business as AmerenUE, is specifically conditioned upon the parties' Unanimous Stipulation and Agreement, a copy of which is attached hereto as Attachment 1.

3. That the Commission's approval of the Application of Union Electric Company, doing business as AmerenUE, does not imply or assure approval of any future contracts to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of an electrical corporation within the Commission's jurisdiction.

4. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties and transactions herein involved.

5. That the Commission reserves the right to consider any ratemaking treatment to be afforded the properties and transactions herein involved in a later proceeding.

6. That this order shall become effective on January 25, 2000.

7. That this case may be closed on January 26, 2000.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Thompson, Deputy Chief Regulatory Law Judge

EDITOR'S NOTE: Attachment 1, the Unanimous Stipulation and Agreement, in this case has not been published. If needed, this document is available in the official case files of the Missouri Public Service Commission.

**In the Matter of the Monitoring of the Experimental Alternative
Regulation Plan of Union Electric Company.***

Case No. EO-96-14

Decided January 25, 2000

Electric §§1, 9. Evidence, Practice and Procedure §§1, 2, 24. The Commission denied the applications for rehearing filed pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160(3) because neither application stated sufficient reason to do so.

Electric §§1, 9. Evidence, Practice and Procedure §§1, 2, 24. The Commission denied AmerenUE's motion for stay because the authority cited by the movant, Section 386.520, RSMo, does not authorize the Commission to stay its own order.

Electric §§1, 9. Evidence, Practice and Procedure §§1, 2, 24. The Commission granted Public Counsel's motion for clarification of the Commission's intent that the revenues ordered to be booked as "other income and deductions" relating to decommissioning funds flow through to ratepayers in the form of sharing credits.

**ORDER DENYING APPLICATIONS FOR REHEARING, DENYING MOTION FOR
STAY AND GRANTING MOTION FOR CLARIFICATION**

On December 23, 1999, the Missouri Public Service Commission (Commission) issued its Report and Order resolving the remaining issues regarding the third credit sharing year. On December 30, 1999, Union Electric Company d/b/a AmerenUE (AmerenUE) filed its application for rehearing and request for a stay. In its application for rehearing, AmerenUE stated that reconsideration of the Commission's Report and Order was warranted because certain decisions in the Report and Order were "unlawful, unjust, unreasonable, and/or are not grounded on competent and substantial evidence." In its argument, AmerenUE alleges that the Commission has failed to set forth required findings of fact and conclusions of law, including the Commission's statutory authority to order the adjustments contained in its Report and Order. Further, AmerenUE alleges that the Commission's order violates the binding legal obligations established in the Stipulation and Agreement approved by the Commission in Case No. ER-95-411 and that the Report and Order exceeds the Commission's statutory and constitutional authority. AmerenUE alleges that the Commission erred in adopting several of the adjustments recommended by Staff and Public Counsel because those adjustments were unsupported by competent and substantial evidence, including Year 2000 costs, decommissioning fund deposits which AmerenUE characterizes as a cash working capital benefit, territorial agreements, and merger costs.

AmerenUE also alleges that the Commission's Report and Order issued December 23, 1999, violates the due process clauses of both the Missouri and the United States Constitutions because AmerenUE alleges that the Commission inappropriately shifted the burden of proof relating to territorial agreement costs to the company after the hearing. AmerenUE further alleges that the Commission's

*This order contains changes ordered by the Missouri Public Service Commission on January 25, 2000.

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Report and Order issued December 23, 1999, violates both the Missouri and the United States Constitutions because the Commission ordered adjustments that impair AmerenUE's contract rights and AmerenUE alleges that the Commission has done so with no justification based in overarching concerns of public health, safety or welfare. AmerenUE alleges that the Commission's Report and Order issued December 23, 1999, violates both the Missouri and the United States Constitutions because it deprives AmerenUE of its property without just compensation and interferes with reasonable investment-backed expectations, both of which are protected under the "takings clauses" of the United States and the Missouri Constitutions. AmerenUE also alleges that the Commission's Report and Order issued December 23, 1999, violates the due process clauses of both the Missouri and the United States Constitutions because the Commission's order is alleged to constitute "retroactive lawmaking" and "resting on no rule or standard except the Commission's unanchored discretion". Finally, AmerenUE alleges that the Commission's order directing the submission of memoranda with recommendations in compliance with Section 3.g. of the Stipulation and Agreement is unlawful because it is AmerenUE's position that Section 3.g. no longer has any legal force or authority because either it has been superseded by Section 3.g. of the second experimental alternative regulation plan (EARP) or the first EARP has long since ended. AmerenUE states that "any question of whether it [the first EARP] should be continued is literally nonsense."

AmerenUE also requested that the Commission issue its order staying implementation of the credit sharing until this matter is no longer appealable. AmerenUE cites the difficulty in crediting consumers currently in place who may later be absent when and if the Commission's Report and Order were to be overturned on appeal and it would be necessary to recollect the sharing credits paid erroneously.

On January 3, 2000, Staff of the Missouri Public Service Commission (Staff) filed its initial response to AmerenUE's application for rehearing and motion for a stay. In its initial response to AmerenUE's application for rehearing and motion for stay, Staff noted that the case which AmerenUE cites, *State ex rel. Midwest Gas User's Ass'n v. Public Serv. Comm'n*, 996 S.W.2d 608 (Mo. App. 1999), involved the court's determination of the appropriate application of Section 386.520, RSMo (1994). Section 386.520 provides direction to the circuit court to issue a stay or suspend the order and decision of the Commission under specific criteria. Nowhere in the statutory sections set forth in full in the Staff's initial response is there any statutory section which grants the Commission authority to stay its own decision and order after such has been issued.

On January 3, 2000, the Office of the Public Counsel (Public Counsel) filed its Application For Rehearing And Motion For Clarification. In its application for rehearing, Public Counsel states that the Commission's Report and Order issued December 23, 1999, is unlawful, unjust, unreasonable, arbitrary, capricious, involves an abuse of discretion, and is not supported by competent and substantial evidence

on the whole record. Public Counsel specifically states that the Commission's Report and Order fails to require AmerenUE to bear the burden of proof regarding the issues litigated in this matter in violation of Section 386.430, RSMo (1994) and contrary to the Commission's approval of the Stipulation and Agreement in Case No. ER-95-411. Public Counsel further alleges that the Commission's order unlawfully and unreasonably fails to require AmerenUE to capitalize those costs referred to as "other computer costs" for regulatory purposes. Further, Public Counsel alleges that the Commission's Report and Order issued December 23, 1999, failed to address Public Counsel's primary recommendation that would require AmerenUE to place an additional payment with the trust fund for the full amount of the earnings enjoyed by AmerenUE during the delays. Public Counsel requests that this issue either be reheard or clarified. Public Counsel requested specifically that the Commission clarify that it intended for the interest revenues earned by AmerenUE while holding the decommissioning funds, which were ordered to be booked as "other income and deductions," to flow through to ratepayers in the form of sharing credits.

Public Counsel further alleges that the Commission's finding that there was insufficient evidence to show that AmerenUE should be ordered to pay interest on the decommissioning fund deposit payment due March 1998 is unlawful and unreasonable. Public Counsel also alleges that it was unreasonable for the Commission to require that the interest calculated on the four late decommissioning payments should be calculated based on the weighted average short-term borrowing rate, instead of the expected average rate actually utilized by the decommissioning trust fund actuaries, 9.25 percent. Finally, Public Counsel alleges that with regard to the other computer costs issue and the decommissioning fund deposit issue, the Commission's Report and Order issued December 23, 1999, is legally deficient because it lacks adequate findings of fact and conclusions of law.

The Commission has considered the applications for rehearing filed by AmerenUE and Public Counsel. Pursuant to Section 386.500, RSMo (1994), and 4 CSR 240-2.160(3), the Commission shall grant a rehearing if in its judgment there is sufficient reason to do so. Neither AmerenUE nor Public Counsel has provided sufficient reason for the Commission to grant a rehearing and the Commission will deny these applications.

The Commission has considered AmerenUE's motion for stay and the other filings made by the parties. Section 386.520, RSMo (1994), authorizes the circuit court to entertain motions for stay. If the Commission was authorized to consider this motion staying its own Report and Order, the Commission would be concerned that those same customers who AmerenUE has referred to in its affidavit are the same customers who paid the rates that resulted in the credit sharing revenues and as they leave the AmerenUE system, they will not receive their share of the credit. It is apparent that the parties have reached agreeable methods in the past by which credits have been shared throughout the three years covered by this credit sharing plan as well as the one time credits which were distributed. If no specific plan is already set

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forth in the Stipulation and Agreement in Case No. ER-95-411, an equitable distribution plan could be adopted by this Commission. Should the company need to recover costs, adjustments could be made in the same manner by affecting future credit sharing which are still pending. AmerenUE's motion to stay shall be denied.

Finally, the Commission has considered Public Counsel's motion for clarification which requested that the Commission clarify its intent that the revenues ordered to be booked as "other income and deductions" in relation to decommissioning funds should flow through to ratepayers in the form of sharing credits. In its Report and Order issued December 23, 1999, the Commission found that AmerenUE did receive a benefit during the third sharing period as a result of a delay in making four quarterly deposits to the decommissioning fund. By ordering AmerenUE to account for these additional interest revenues as "other income and deductions," the Commission expected that the revenues shown by the company would increase by the amount of interest earned and that the appropriate portion of such revenues would then flow through to the ratepayers in the form of sharing credits as that amount should increase the overall revenues under consideration. The Commission will grant Public Counsel's motion for clarification.

IT IS THEREFORE ORDERED:

1. That the application for rehearing filed by Union Electric Company d/b/a AmerenUE on December 30, 1999, is denied.
2. That the motion for stay filed by Union Electric Company d/b/a AmerenUE on December 30, 1999, is denied.
3. That the application for rehearing filed by the Office of the Public Counsel on January 3, 2000, is denied.
4. That the motion for clarification filed by the Office of the Public Counsel on January 3, 2000, is granted. The Commission finds that its ordered paragraph No. 7 which directed Union Electric Company d/b/a AmerenUE to account for additional revenues earned and interest revenues which accumulated due to late payment of decommissioning fund deposits should be considered revenues in the calculation of earnings and the appropriate portion of the revenues shall flow through to the ratepayers in the form of sharing credits.
5. That this order shall become effective on February 4, 2000.

Lumpe, Ch., Schemenauer, and Drainer, CC., concur Murray, C., dissents with dissenting opinion Crumpton, C., absent
Register, Regulatory Law Judge

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I respectfully dissent. The Commission should take this opportunity to reconsider the Report and Order issued on December 23, 1999, and correct the deficiencies therein. The Commission's authority to reconsider the order is found in 4 CSR 240-2.160(3), which provides that:

The commission shall grant a rehearing or reconsider the order if in its judgment there is sufficient reason to do so. (Emphasis added)

The Commission should clarify that the Commission does not consider the EARP to have been a failure. The frustration expressed in the Report and Order regarding time taken to litigate the novel questions of first impression should have been tempered. Express recognition of the benefits that the EARP has brought to Missouri as well as express recognition that the parties were successful in containing the process by settling many issues would have been appropriate in the Report and Order and should now be made clear.

The Commission should further clarify that the Commission recognizes that calculation of sharing credits under the EARP does not constitute rate making, and that its statutory power to ensure just and reasonable rates is not the authority upon which it relied to order adjustments under the EARP. Furthermore, the Commission should clarify its statements concerning its role under the EARP. The Commission should make clear that all adjustments ordered were required by the application of the reconciliation procedure set forth in the EARP Stipulation and Agreement and were not ordered as an act of discretion on the part of the Commission. It should further clarify that the unilateral amendment process proposed by Staff is not permissible under the EARP and that the Commission did not adopt Staff's interpretation that the Commission may order an adjustment not provided in the reconciliation procedure. As I stated in my Concurring Opinion to the Report and Order, the Commission's discussion of the issue of injuries and damages confused, rather than clarified, the appropriate application of the reconciliation procedure.

Most importantly, Staff's Motion for Clarification and AmerenUE's Application for Rehearing demonstrate that the record does not support inclusion of the section in the Report and Order related to compliance with Section 3.g. of Case No. ER-95-411 Stipulation and Agreement. The Commission should reconsider and rescind ordered paragraph No. 8.

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In the Matter of the Missouri Public Service Commission, Complainant, vs. The City of Granby, Missouri, Respondent.

Case No. GC-96-452

Decided January 25, 2000

Gas §16. The Commission denied Staff's motion seeking penalties against a municipality where the municipality completed a gas distribution system replacement project mandated by the Commission but did so five months after a deadline imposed by the Commission.

**ORDER DENYING STAFF'S MOTION
SEEKING PENALTIES AND CLOSING CASE**

As part of a stipulation and agreement to resolve a complaint brought by the Staff of the Public Service Commission (Staff), the City of Granby (Granby) undertook a project to replace its steel natural gas distribution system with a system consisting of polyethylene pipe, valves and fittings. Granby agreed to complete this project by April 1, 1999. By its order issued on December 3, 1998, the Commission granted Granby's motion to extend that deadline to July 31, 1999. On August 5, 1999, the Commission denied Granby's request to again extend the time allowed for completion of the replacement project.

On October 27, 1999, the Staff filed a Motion Seeking Penalties. That motion asked the Commission to authorize the Commission's General Counsel to seek financial penalties against Granby for its failure to complete the project by the deadline imposed by the Commission. Granby responded to Staff's motion on November 8, by filing its suggestions in opposition along with a motion asking the Commission to dismiss Staff's motion for penalties. Neither Staff's motion, nor Granby's response, indicated whether or not the gas distribution system replacement project had been completed.

Wishing to have more information about the current status of the gas system replacement project before ruling on Staff's motion for penalties and Granby's motion to dismiss, the Commission, on December 9, 1999, issued an Order Directing the City of Granby to File a Verified Progress Report. On December 21, 1999, the City of Granby filed a verified report, signed by the Mayor of Granby, indicating that the gas distribution system replacement project has been fully completed. On January 6, 2000, Staff filed a response to the verified report in which Staff indicated that an on-site inspection indicated that Granby's records indicate that the gas distribution system replacement project was completed on December 14, 1999.

After considering these matters, the Commission has concluded that, although it has the authority to seek monetary penalties against the City of Granby, it will not do so. The gas distribution system replacement project is now complete and the

safety of the public has been protected. Nothing would be gained by imposing penalties against Granby.

IT IS THEREFORE ORDERED:

1. That Staff's Motion Seeking Penalties is denied.
2. That this order shall become effective on February 4, 2000.
3. That this case may be closed on February 7, 2000.

Lumpe, Ch., Murray, Schemenauer, and Drainer, CC., concur
Crompton, C., absent
Woodruff, Regulatory Law Judge

**In the Matter of the Application of Kansas City Power & Light
Company for Approval of the Accrual and Funding of Wolf
Creek Generating Station Decommissioning Costs at Current
Levels**

Case No. EO-2000-210
Decided January 27, 2000

Electric §§17, 45. Evidence, Practice and Procedure § 9. On January 27, 2000, the Commission ordered that the Unanimous Stipulation and Agreement filed on December 20, 1999, is approved, and that Kansas City Power and Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$2,303,856.

ORDER APPROVING STIPULATION AND AGREEMENT

On September 1, 1999, Kansas City Power & Light Company (KCPL) filed an application with the Missouri Public Service Commission (Commission) for approval of the accrual and funding of Wolf Creek Generating Station (Wolf Creek) decommissioning costs at current levels.

On September 7, 1999, the Commission issued notice of the application, and allowed interested entities the opportunity to intervene. Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an oral hearing is not necessary and KCPL may submit evidence in support of its application by verified statement. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

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On October 7, 1999, the Staff of the Commission (Staff) filed its motion for an extension of time to file a stipulation and agreement or a procedural schedule. Before that motion could be ruled on, on October 15, 1999, Staff filed its second motion for extension of time to file a stipulation and agreement or a procedural schedule, requesting that the Commission give the parties until November 4, 1999, to either file a stipulation and agreement or a procedural schedule. On October 19, 1999, the Commission entered its order extending the date for the filing of a procedural schedule until November 4, 1999. On November 4, 1999, Staff filed its third motion for extension of time to file a stipulation and agreement or a procedural schedule, requesting that the Commission give the parties until December 4, 1999, to either file a stipulation and agreement or a procedural schedule. On November 10, 1999, the Commission entered another order extending the date for the filing of a procedural schedule until January 4, 2000.

On December 14, 1999, KCPL filed its motion to amend its application for approval of the accrual and funding of Wolf Creek Generating Station decommissioning costs at current levels. KCPL stated that this amendment would correct an inaccurate assumption that only the land and right of way would be subject to property taxes. The proposed amendment, KCPL stated, assumes that some of the buildings will continue in use and, therefore, be subject to property taxes. The proposed amendment would result in an increase in the estimated property taxes from \$608,537 to \$3,885,197, KCPL stated. KCPL stated also that the overall cost of decommissioning was changed to reflect the increase of \$3,276,579 in estimated property taxes. The Commission will grant KCPL's motion to amend its application for approval of the accrual and funding of Wolf Creek Generating Station decommissioning costs at current levels.

The Office of the Public Counsel, Staff, and KCPL (the parties) filed a unanimous stipulation and agreement on December 20, 1999. On January 14, 2000, the parties filed a motion to file an amended page in the stipulation, which corrected the original last page of the stipulation and agreement. The Commission will grant the parties' motion to file an amended page in the stipulation.

In the stipulation and agreement, the parties agree, *inter alia*, that KCPL shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates. The parties further agree that annual decommissioning costs in the amount of \$2,303,856 are, and should continue to be, included in KCPL's cost of service and reflected in its current rates for ratemaking purposes. The parties agree that it is reasonable and prudent to continue the annual accruals at the current level of \$2,303,856, the current Missouri jurisdictional amount.

On December 20, 1999, Staff filed the testimony of David Broadwater (Broadwater) in support of the stipulation. Broadwater testified, *inter alia*, that Staff and KCPL have agreed to an amount of decommissioning expense of approximately \$470 million in 1999 dollars, and have also agreed upon the annual funding level. Broadwater

reviewed KCPL's decommissioning options, and explained the current status of the fund.

The Commission has considered the verified application, the unanimous stipulation and agreement, and the testimony of Broadwater. The Commission finds that the parties' estimate of \$470 million in 1999 dollars to immediately decommission Wolf Creek upon the expiration of its forty year license is reasonable. The Commission also finds that KCPL's currently effective rates include an annual amount of \$2,303,856 for decommissioning expense.

IT IS THEREFORE ORDERED:

1. That the Motion to File Amended Page in Stipulation and Agreement filed on January 14, 2000, is granted.
2. That the Unanimous Stipulation and Agreement filed on December 20, 1999, is approved.
3. That Kansas City Power and Light Company's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$2,303,856.
4. That the December 14, 1999, motion by Kansas City Power and Light Company to amend its application for approval of the accrual and funding of Wolf Creek Generating Station decommissioning costs at current levels is granted.
5. That Kansas City Power and Light Company or its trustee shall file on a prospective basis in this case one copy of the quarterly reports required by Commission Rule 4 CSR 240-20.070(5) and one copy of the annual reports required by Commission Rule 4 CSR 240-20.070(6).
6. That this order shall become effective February 8, 2000.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Hopkins, Senior Regulatory Law Judge

EDITOR'S NOTE: The Unanimous Stipulation and Agreement in this case has not been published. If needed, this document is available in the official files of the Missouri Public Service Commission.

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In the Matter of the Application of Kansas City Power & Light Company for a Waiver or Variance from Order Granting Variance in Case No. EO-91-224 for Good Cause Shown

Case No. EO-96-386

Decided January 27, 2000

Electric §14. The Commission terminated a variance previously granted to an electric utility because the meter replacement project for which the variance was needed had been completed.

ORDER ENDING VARIANCE AND CLOSING CASE

On August 6, 1996, the Commission granted a waiver requested by Kansas City Power & Light Company (KCPL). The waiver temporarily relieved KCPL of the requirement that it use statistical procedures to test the accuracy of its meters. KCPL represented that the testing procedures were not necessary while it was in the process of replacing its meters with CellNet meter modules in order to implement an automated meter reading system. KCPL's waiver application requested that the waiver from the required testing procedures be effective only through December 31, 1996. However, the Commission's order did not establish a termination date for the variance. Instead, the Commission directed KCPL to file a pleading in the case indicating when it had completed the meter replacement program and returned to the previously established testing procedures.

On June 18, 1999, the Commission issued an Order directing KCPL to file a report advising the Commission of the status or completion of the meter replacement project and variance. On August 27, 1999, KCPL filed a report indicating that the meter replacement project was not yet complete and that KCPL had not yet reverted to compliance with the statistical sampling method of testing the accuracy of its meters.

On September 21, 1999, the Commission directed its Staff to investigate the circumstances surrounding the completion of KCPL's meter replacement project to determine whether or not the delay in the completion of that project and the resulting delay in KCPL's return to the established testing program had adversely affected KCPL's ability to ensure the accuracy of its meters. Staff conducted the ordered investigation and on November 19, 1999, filed a Memorandum in which it reported that KCPL has not compromised the accuracy of its meters during the replacement project. Staff indicated that KCPL anticipated completing the meter replacement project by January 1, 2000. In response to Staff's recommendation, the Commission, on December 7, 1999, ordered KCPL to file a report, no later than January 14, 2000, indicating whether or not the variance granted on August 6, 1996 should be continued.

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On January 10, 2000, KCPL filed its report. KCPL indicates that it has completed the meter replacement project and that, as of the first week of January, 2000, it has resumed normal meter testing. KCPL states that it no longer needs a waiver or variance from the statistical method of testing the accuracy of its meters.

Since KCPL no longer needs the variance that was granted in this case, that variance will be terminated and this case will be closed.

IT IS THEREFORE ORDERED:

1. That the variance granted to Kansas City Power & Light Company by the Commission's order of August 6, 1996, to carry out the CellNet Data Systems project is terminated.
2. That this order shall become effective on February 8, 2000.
3. That this case shall be closed on February 9, 2000.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur
Woodruff, Regulatory Law Judge

**In the Matter of Alma Telephone Company's Filing to Revise its
Access Service Tariff, P.S.C. Mo. No. 2. Tariff No. 9900658***

**In the Matter of MoKan Dial, Inc.'s Filing to Revise its Access
Service Tariff, P.S.C. Mo. No. 2. Tariff No. 9900656**

**In the Matter of Mid-Missouri Telephone Company's Filing to
Revise its Access Service Tariff, P.S.C. Mo. No. 2. Tariff No.
9900712**

**In the Matter of Choctaw Telephone Company's Filing to Revise its
Access Service Tariff, P.S.C. Mo. No. 1. Tariff No. 9900667**

**In the Matter of Chariton Valley Telephone Company's Filing to
Revise its Access Service Tariff, P.S.C. Mo. No. 2. Tariff No.
9900657**

**In the Matter of Peace Valley Telephone Company's Filing to
Revise its Access Service Tariff, P.S.C. Mo. No. 2. Tariff No.
9900655. (Consolidated)**

*The Commission, in an order issued on February 29, 2000, denied an application for rehearing in this case.

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Case No. TT-99-428, et al.

Decided January 27, 2000

Telecommunications §14. The Commission did not approve the request by local telephone companies to amend their tariffs to allow them to apply their switched access rates to traffic originating on a commercial mobile radio service that terminates in their territory.

APPEARANCES

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Charles W. McKee, Esq., Sprint Spectrum L.P. d/b/a Sprint PCS, 4900 Main 12th Floor, Kansas City, Missouri 64112, for Sprint PCS.

Michael Dandino, Esq., Senior Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for the Office of the Public Counsel.

Marc Poston, Esq., Senior General Counsel, and Julie Kardis, Esq., Assistant General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102-0360, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Bill Hopkins, Senior Regulatory Law Judge

REPORT AND ORDER

I. Procedural History

All of the above-captioned cases involve proposed tariffs filed with the Missouri Public Service Commission (Commission) and suspended at the request of the Staff of the Commission (Staff). Unless otherwise indicated by the context, all of the applicants who filed the proposed tariffs will be collectively referred to as “Alma¹” or “Applicants.”

On March 9, 1999, Alma Telephone Company (Alma) filed a Second Revised Sheet No. 40.1, to replace the First Revised Sheet No. 40.1, for Alma, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 9, 1999, MoKan Dial Inc. (MoKan) filed a Fourth Revised Sheet No. 7, to replace the Third Revised Sheet No. 7, for Freeman, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 18, 1999, Mid-Missouri Telephone Company (Mid-Missouri) filed a Second Revised Sheet No. 5, to replace the First Revised Sheet No. 5, for all Missouri exchanges in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 22, 1999, and an effective date of April 21, 1999.

On March 11, 1999, Choctaw Telephone Company (Choctaw) filed a Second Revised Sheet No. 30, to replace the First Revised Sheet No. 30, Halltown, Missouri, in its P.S.C. Mo. tariff No. 1. The revised sheet had an issuance date of March 12, 1999, and an effective date of April 11, 1999.

On March 9, 1999, Chariton Telephone Company (Chariton) filed a Second Revised Sheet No. 14, to replace the First Revised Sheet No. 14, for all Missouri exchanges in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

On March 9, 1999, Peace Valley Telephone Company (Peace Valley) filed a Second Revised Sheet No. 13, to replace the First Revised Sheet No. 13, for Peace Valley, Missouri, in its P.S.C. Mo. tariff No. 2. The revised sheet had an issuance date of March 10, 1999, and an effective date of April 9, 1999.

Motions to suspend the tariffs in all of these cases were filed by the Staff of the Missouri Public Service Commission on April 1, 1999. On April 8, 1999, the Commission granted all the motions, set the date of April 19, 1999 for the filing

¹ Although some of the pleadings in this case indicate they were filed on behalf of the “Mid-Missouri Group,” the Commission notes that no such group is a party to these cases. The companies whose proposed tariffs are the subject of these cases do sometimes intervene as a part of the “Mid-Missouri Group,” but did not so classify themselves in these cases. The Commission will treat any pleadings filed by the “Mid-Missouri Group” as though they were filed by Alma Telephone Company, MoKan Dial, Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Valley Telephone Company, and Peace Valley Telephone Company, either individually or as a group, as the context requires. The Commission also acknowledges that a Notice of Group Name Change was filed by all the applicants on December 29, 1999, stating that “Mid-Missouri Group” has changed its name to “Missouri Independent Telephone Group.” To avoid further confusion, that term will not be used in this report and order.

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of a procedural schedule, and suspended the tariffs in each of the cases as follows: Alma—August 10, 1999; MoKan—August 10, 1999; Mid-Missouri—August 20, 1999; Choctaw—August 12, 1999; Chariton—August 12, 1999; Peace Valley—August 12, 1999.

On April 26, 1999, Sprint Spectrum L.P. d/b/a Sprint PCS (Sprint PCS) filed its application to intervene in all of the cases. On April 27, 1999, Southwestern Bell Telephone Company (SWBT) filed its application to intervene in all of the cases. On April 28, 1999, GTE Midwest Incorporated filed its application to intervene only in TT-99-433, and the following entities filed their applications to intervene in all of the cases: AT&T Wireless Services, Inc. (AWS)²; Southwestern Bell Wireless, Inc. (SWBW); and the Small Telephone Company Group (STCG).

A prehearing conference was held on April 29, 1999. On May 11, 1999, the Commission entered its order consolidating all of the cases for hearing purposes, making TT-99-428 the lead case, and also extending the date for filing a procedural schedule until May 21, 1999. On June 16, 1999, the Commission entered its show cause order, stating that Alma had until June 26, 1999, to explain why it had not complied with the Commission's order to file a procedural schedule by May 21, 1999, or show cause why the cases should not be dismissed.

On June 21, 1999, Alma filed its response to the show cause order and stated, *inter alia*, that it had never received a copy of the May 11, 1999, order of the Commission. On June 30, 1999, the Commission entered its order granting intervention and granting participation without intervention to the parties as set forth above. On the same day, the Commission entered an order setting the date of July 20, 1999, for the filing of a procedural schedule. On July 15, 1999, Alma filed a proposed procedural schedule. On August 3, 1999, the Commission entered its order overruling the motion to establish a procedural schedule on the grounds that the dates in the motion would fall after the statutory deadlines placed on the Commission. On August 5, 1999, Alma filed its new proposed procedural schedule which offered two alternatives: 1) to extend the tariff date so that the first procedural schedule would be acceptable to the Commission, or 2) that a single prefiled brief and oral arguments thereon would be allowed which would enable the case to be concluded within the statutory time.

On August 9, 1999, Sprint PCS filed its objections to Alma's data requests.

On August 10, 1999, the Commission entered its order consolidating all of the cases for all purposes, acknowledging the extension of the effective dates of the tariffs until December 15, 1999, and establishing a procedural schedule with, *inter alia*, dates for the prefiling of testimony and the dates of October 12 and 13, 1999, for an evidentiary hearing.

² AWS sometimes refers to itself in this case as AT&T Communications of the Southwest, Inc. However, this report and order will only use AWS as its reference.

On August 13, 1999, Alma filed a motion for a protective order for discovery purposes for all the parties. On August 26, 1999, the Commission entered its protective order.

On September 15, 1999, Alma filed its motion to compel responses from SWBT, AWS, and SWBW. On September 27, 1999, the counsel for Alma did not file a pleading but did file a letter stating that SWBT had provided Alma with data responses which satisfied its motion to compel and thus Alma was withdrawing its motion to compel responses from SWBT. On September 28, 1999, SWBW filed its response to Alma's motion to compel.

The following parties filed position statements on October 4, 1999: Alma, STCG, SWBT, SWBW, AWS, Sprint PCS, Office of the Public Counsel (Public Counsel), and Staff.

On October 12, 1999, at the evidentiary hearing on this matter, SWBT filed and argued a motion to compel a response to its data requests. That motion was overruled by the Commission on the record on October 13, 1999.

On October 14, 1999, Alma filed its motion for approval of a post-hearing briefing schedule, which was approved by the Commission on October 26, 1999. Alma also noted in the same motion that it had extended its tariff effective date until February 15, 2000.

With the oral permission of the Commission granted at the evidentiary hearing, several parties filed written questions to be asked of one of AWS's witnesses in lieu of cross-examination because of the unavailability of that witness at the hearing.

On October 28, 1999, volume two of the transcript was filed and on November 1, 1999, volume three of the transcript was filed. On December 10, 1999, initial briefs were filed by all the parties. On January 3, 2000, Alma filed its reply brief. On January 4, 2000, reply briefs were filed by SWBW, Staff, STCG, AWS and SWBT. On January 4, 2000, Sprint PCS filed a motion to accept the late filing of its reply brief, which it also filed the same day. That motion will be granted.

II. Issues

At the prehearing conference, the parties attending agreed that there were no disputed facts and that the only issue in this case was whether the local telephone companies involved are allowed to amend their tariffs so that they can apply their switched access rates to traffic originating on a commercial mobile radio service (CMRS) that terminates in their territory. In their position statements filed, all of the parties agreed that the issue should be subdivided into two questions: (1) Is the tariff proposed by Alma lawful as applied to wireless or competitive local exchange company (CLEC) traffic? and, (2) If lawful, should the tariff proposed by Alma be approved?

As discussed below, the Commission has determined that: (1) the tariff proposed by Alma is not lawful as applied to wireless or CLEC traffic and, thus, (2) the tariff proposed by Alma should not be approved.

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III. Discussion

A. Is the tariff proposed by Alma lawful as applied to wireless or CLEC traffic?

In their position statements filed by the parties, Alma, Public Counsel, and STCG all agreed that the tariffs proposed by Alma were lawful both as applied to wireless traffic and CLEC traffic. In their position statements, Staff, AWS, SWBT, and Sprint PCS all agreed that the tariffs were unlawful both as applied to wireless traffic and CLEC traffic. SWBW stated that the tariffs were unlawful as applied to wireless traffic, but took no position concerning CLEC traffic.

The resolution of this issue clearly revolves around geography, not the number of carriers involved in a telephone call.

Alma filed this case to make the following addition to its access tariff:

APPLICABILITY OF THIS TARIFF

The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telephone Company, by another carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to the provisions of 47 U.S.C. 252, as may be amended.

Alma testified that its current tariff applies access rates to traffic which, for example, originates from a CLEC, transits SWBT's network and terminates in an Alma exchange. The proposed tariff language, however, would enable Alma to charge access rates to wireless carriers, as well as CLECs, that originate calls that ultimately terminate in an Alma exchange.

Alma has maintained throughout the proceedings that a telephone call which involves only two carriers should be billed by the reciprocal compensation method, but that when three carriers are involved, access charges apply. This, Alma maintains, is true whether the call is local or long distance. However, the emphasis on the number of carriers involved, instead of the jurisdictional nature of the call, is simply incorrect when determining the compensation obligations of the parties.

In its Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, August 8, 1996 (First Report and Order), the Federal Communications Commission (FCC) implemented, inter alia, the interconnection requirements of the Telecommunications Act of 1996 (the Act) as they pertained to local exchange carriers (LECs) and CMRS providers. The FCC explicitly determined that the LECs' reciprocal compensation obligations under Section 251(b)(5) of the Act apply to all local traffic transmitted between LECs and CMRS providers. The FCC's largest authorized CMRS provider territory is a Major Trading Area (MTA)³. Clarifying

³ The FCC defines a "major trading area" as an area whose boundaries have been determined by Rand McNally. Rand McNally apparently determined the boundaries of these trading areas after studying such factors as physiography, population distribution, newspaper circulation, economic activities, highway facilities, railroad service, suburban transportation, and field reports of sales analysts.

what traffic is considered “local,” the FCC decided that the MTA serves as the most appropriate definition for a local service area for CMRS traffic when calculating reciprocal compensation under the Act.

In the First Report and Order, the FCC made it abundantly clear that access charges do not apply to local traffic exchanged between LECs and CMRS providers. Traffic to or from a CMRS provider’s network, the FCC held, that originates and terminates in the same MTA is subject to transport and termination rates under the Act but is not subject to interstate or intrastate access charges. In the present case, if its tariffs were approved, Alma would be allowed to apply access charges to traffic exchanged with CMRS providers within the same MTA. Such an action would clearly violate both the Act and the First Report and Order.

Alma relies, in part, on the FCC’s use in the First Report and Order of a “three carrier” example for access charges and a “two carrier” description for reciprocal compensation. The FCC, however, never made the simplistic rule that said that if two carriers were involved in a telephone call, that reciprocal compensation was required and three carriers required access charges. To the contrary, the FCC clearly explained its rationale:

We disagree with Frontier’s contention that section 251(b)(5) entitles an IXC [interexchange carrier] to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.

None of the parties to this case dispute that an inter-MTA call is charged under the applicable access rate, because no party disputes that such a call is indeed a long distance call. However, Alma’s contention that intra-MTA calls should also be charged under the access rate when three carriers are involved is not persuasive.

For these reasons, the Commission finds that the tariff proposed by Alma is not lawful as applied to either wireless or CLEC traffic.

B. If lawful, should the tariff proposed by Alma be approved?

In their position statements, Alma and Staff agreed that the tariffs proposed by Alma, if lawful, should be approved. Public Counsel and STCG agreed that the tariffs

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proposed by Alma, if lawful should be approved if modified. Public Counsel and STCG stated that the tariffs should be modified to clarify the scope of the tariff to exclude traffic exchanged under other approved agreements.

The Commission finds that this question is moot since the Commission is declining to approve the tariff proposed by Alma, after finding such tariffs unlawful.

IV. Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

The Commission finds that there are no facts in dispute.

V. Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

1. The Commission finds that local traffic is not subject to switched access charges.
2. The Commission finds that CMRS traffic to and from a wireless network that originates and terminates within the same MTA is local traffic, regardless of the number of carriers involved.
3. The Commission finds that the proposed tariffs are not lawful and must be rejected because they would allow Applicants to charge switched access rates for local traffic.

IT IS THEREFORE ORDERED:

1. That Sprint Spectrum L.P. d/b/a Sprint PCS's motion to late file its reply brief is granted.
2. That any motions which have not been previously ruled upon, if any, are hereby denied.
3. That any objections which have not been previously ruled upon, if any, are hereby overruled.
4. That the proposed tariffs filed by Alma Telephone Company, MoKan Dial Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Telephone Company, and Peace Valley Telephone Company, are rejected.
5. This Report and Order shall become effective on February 8, 2000.
6. That this case may be closed on February 9, 2000.

Lumpe, Ch., Crumpton, Murray, Schemenauer, and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

In the Matter of the Application of UtiliCorp United Inc. for Authority to Acquire, Indirectly, an Ownership Interest in Companhia Energetia De Pernambuco, an Electric Utility Distribution Business Located in Brazil, and to Take All Other Actions Reasonably Necessary to Effectuate Said Transaction.*

Case No. EM-2000-358
Decided January 27, 2000

Security Issues §12. The Commission approved an application for a public utility to submit its bid to acquire stock of a Brazilian public utility through a subsidiary.

Security Issues §21. The Commission's approval of an application for a public utility to submit its bid to acquire stock of a Brazilian public utility through a subsidiary was conditioned on allocating any adverse financial effects to shareholders.

ORDER APPROVING APPLICATION

On December 3, 1999, UtiliCorp United, Inc. (UtiliCorp), filed an application with the Commission requesting authority to act through its Brazilian subsidiary, UtiliCorp Brazil Energy Holdings, through a bid process, to acquire the capital stock of Companhia Energetia De Pernambuco (CELPE). CELPE is a state-owned electric utility located in Brazil. Due to the bidding timetable for the transaction, UtiliCorp has requested the Commission's expedited action on its application so that UtiliCorp would be in a position to submit its bid no later than February 15, 2000.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to be heard. If no proper party is granted intervention and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary and that the applicant may submit its evidence in support of the application by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). No applications for intervention were filed. Neither the Commission's Staff nor the Office of the Public Counsel has requested a hearing.

On January 21, 2000, the Staff filed a memorandum to the official case file reviewing the application and proposed acquisition and making a recommendation to approve the application with conditions.

*The Commission issued an order canceling approval of the application and closing the case on April 4, 2000.

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UtiliCorp submitted its application pursuant to Section 393.190, RSMo 1994, and 4 CSR 240-2.060(9). The Commission may approve the acquisition of the stock of a public utility by UtiliCorp so long as the transaction would not be detrimental to the public interest. The Staff's memorandum reviewing the application identifies areas of concern but also proposes conditions so that the transaction would not be detrimental to the public interest. Staff indicates that UtiliCorp was provided a copy of the Staff memorandum and that UtiliCorp indicated that it would not file a response. Thus, UtiliCorp has not objected to the conditions recommended by Staff.

Based upon the application and the Staff memorandum, since 1995, the Brazilian government has taken steps to privatize its electrical power industry. CELPE is a state-owned electric utility that serves approximately 1.8 million industrial, commercial and residential customers in the northeast region of Brazil. UtiliCorp, through its Brazilian subsidiary, will acquire an approximate 50 percent ownership interest in CELPE if its proposal is accepted. UtiliCorp's direct investment could be as much as \$425 million. If the purchase price is higher, it will be made up by UtiliCorp's partners in its Brazilian subsidiary.

The Staff reviewed the current and pro forma financial statements submitted with the application to consider the transactions impact on UtiliCorp. Staff also reviewed the reports of commercial rating agencies concerning the financial condition and credit rating of UtiliCorp. Staff also reviewed these matters with UtiliCorp's Director of Corporate Finance. According to the Director, the Company is committed to maintaining its credit quality and maintaining a capital structure of approximately 55 percent debt and 45 percent equity.

The Staff stated that the transactions presented in the application would not be detrimental to public interest. Staff recommended approval of the application with specific conditions.

The Commission finds that the transactions presented in UtiliCorp's application are not detrimental to the public interest and may be approved with the specific conditions recommended by Staff. Those conditions are ordered below.

IT IS THEREFORE ORDERED:

1. That the application of UtiliCorp United, Inc., requesting authority to act through its Brazilian subsidiary, UtiliCorp Brazil Energy Holdings, through a bid process, to acquire the capital stock of Companhia Energetica De Pernambuco, is hereby approved.
2. That UtiliCorp United, Inc., may take the actions necessary and as authorized in this proceeding to carry out the transactions as described in the application.
3. That nothing in this order shall be considered a finding by the Commission of the value of this transaction for rate making purposes, and that the Commission reserves the right to consider the rate making treatment to be afforded these financing transactions in any subsequent proceeding.
4. That the Commission's order shall not be deemed to be precedent for any future financing even if the facts may be similar.

5. That any adverse financial effects of this acquisition are borne by the shareholders of UtiliCorp United, Inc.

6. That all records pertaining to these transactions be maintained at UtiliCorp United, Inc.'s headquarters and made available to the Commission's Staff, as Staff deems necessary.

7. That UtiliCorp United, Inc., provide documentation of proper cost allocations to nonregulated entities.

8. That UtiliCorp United, Inc., include any costs borne by Missouri Public Service related to the nonregulated subsidiaries in monthly surveillance reports sent to the Commission's Staff.

9. That UtiliCorp United, Inc., file status reports in this proceeding beginning 60 days from the date of this order and each 30 days thereafter advising of the status of the transaction so that the Commission may be apprised of the status of the transactions presented in this case and when this case may be closed.

10. That this order shall become effective on February 7, 2000.

Lumpe, Ch., Crumpton, Drainer, Murray, and Schemenauer, CC., concur.
Thornburg, Regulatory Law Judge
